

SUBCHAPTER A. OPERATION AND MAINTENANCE GRANT PROGRAM

§§529.1 – 529.8

Effective October 14, 2009

§529.1. Statutory Authority and Policy Statement.

Pursuant to §201.001(d), Agriculture Code, the Texas State Soil and Water Conservation Board is designated by the Texas Legislature as the state agency responsible for conserving soil and related resources of this state. Within this context, the State Board is charged with controlling and preventing soil erosion, controlling floods, preventing the impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, and thereby protecting and promoting the health, safety, and general welfare of the people of this state. Consistent with this authority, it is the policy of the Texas State Soil and Water Conservation Board to administer a grant program through local soil and water conservation districts that provides financial assistance for operation and maintenance activities on United States Department of Agriculture Natural Resources Conservation Service assisted flood control dams. In accordance with this purpose, §§529.1 -529.8 of this subchapter (relating to Operation and Maintenance Grant Program) are adopted.

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§529.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings:

(1) Allocation--An amount of funding for a fiscal year specified and withheld by the State Board for an eligible soil and water conservation district for the reimbursement of operation and maintenance activities on flood control dams.

(2) Biennium--The period of time beginning September 1 of every odd numbered year and ending on August 31 twenty-four months later; a biennium includes two fiscal years as defined by this subchapter.

(3) Eligible soil and water conservation district (SWCD)--An SWCD that is listed as a sponsor on an O&M agreement for a watershed project.

(4) Fiscal year--The 12-month period of time beginning September 1 of a year and ending on August 31 of the following year.

(5) Flood control dam--Floodwater retarding structures, also commonly referred to as flood control structures, watershed structures, flood prevention or "FP" sites, and certain grade stabilization structures included in the National Inventory of Dams built by the federal government under one of the four following federal authorizations:

(A) Public Law 78-534, Section 13 of the Flood Control Act of 1944;

(B) Public Law 156-67, the pilot watershed program authorized under the heading Flood Prevention of the Department of Agriculture Appropriation Act of 1954;

(C) Public Law 83-566, the Watershed Protection and Flood Prevention Act of 1954; and

(D) Subtitle H of Title XV of the Agriculture and Flood Act of 1981, commonly known as the Resource Conservation and Development Program.

(6) In-kind match--Non-monetary contributions of services, equipment, or other items of value reported to the State Board by eligible SWCDs for the purpose of satisfying all or a portion of a non-state funded matching requirement for reimbursement of an O&M activity. In-kind match may not be qualified if the source is contributing the in-kind match because it was enabled to do so directly through state appropriations.

(7) National Inventory of Dams--The U.S. Army Corps of Engineers' list of dams first authorized by the National Dam Inspection Act (Public Law 92-367) of 1972.

(8) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which was formerly known as the Soil Conservation Service.

(9) Operation and maintenance (O&M)--The act of performing a specific set of activities associated with maintaining optimal physical conditions and functioning of a flood control dam. O&M is not an activity defined as structural repair. The State Board may adopt technical standards, as defined by this subchapter, for certain O&M activities which must be met prior to reimbursement being approved. Specific O&M activities include:

(A) removal of woody brush or other undesirable vegetation from dam embankments, spillways, and plunge basins;

(B) fence and/or gate installation to prevent the grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins;

(C) fence and/or gate repair to prevent the grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins;

(D) fence and/or gate removal for the purpose of installing new fencing and/or gate(s) to prevent grazing of desirable vegetation and/or surface disturbance of dam embankments, spillways, and plunge basins;

(E) establishment of desirable vegetation, including the fertilization of existing desirable vegetation, intended to stabilize the surface of dam embankments and spillways;

(F) repairing soil erosion damage on dam embankments and spillways resulting from lack of vegetative cover;

(G) clearing debris from principal and auxiliary spillway inlets;

(H) maintenance of and/or replacement of valves and trash guards;

(I) replacement of gate valve and stem on principal spillway;

(J) minor earth shaping and establishment of vegetation to repair a slope slide on a dam embankment;

(K) repair of wave erosion requiring minor earthwork and establishment of vegetation;

(L) repair of minor erosion from livestock and wildlife trailing on dam embankments or spillways;

(M) repair of erosion from vehicles on dam embankments or spillways;

(N) replacement of deteriorated corrugated metal pipe ends (tail pipes);

(O) repair of erosion in auxiliary (emergency) spillway from minor storm damage or livestock/wildlife trailing; and

(P) any other activity approved by the State Board at their discretion if it is not defined as structural repair in this chapter; activities in this category must be approved by the State Board prior to performance of the activity to ensure reimbursement.

(10) O&M agreement--A written agreement pertaining to a specific flood control dam or dams within a watershed project, taking into consideration the powers and jurisdictional boundaries of sponsors, that specifies each sponsors' responsibilities for financing and performing O&M inspections and activities.

(11) O&M technical standard--An established norm or requirement in the form of a formal document establishing uniform engineering or technical criteria, methods, processes, and/or practices adopted by the State Board for a specific O&M activity. O&M activities for which the State Board has adopted an O&M technical standard must be performed in accordance with the technical standard prior to reimbursement being made.

(12) Reimbursement request--A request for reimbursement of a percentage of the costs associated with the performance of O&M activities.

(13) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(14) Sponsor--Any entity or individual that is a signatory to a watershed project plan, watershed agreement, or O&M agreement.

(15) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(16) Texas Commission on Environmental Quality--The state agency created under Title 2, Subtitle A, Chapter 5 of the Texas Water Code (formerly the Texas Natural Resource Conservation Commission).

(17) Watershed agreement--A legal document that records the responsibilities of the sponsors and NRCS for implementing a watershed project plan relating to contributions of funding, the

acquisition of land rights, construction, O&M, project administration, management of affected lands, as well as responsibilities regarding permitting and water and mineral rights.

(18) Watershed project--A geographic area delineated by the boundaries of a watershed within which a series of flood control dams have been constructed or are planned to be constructed by NRCS to prevent and/or minimize floodwater damage to lives and property.

(19) Watershed project plan (or Work Plan)--A plan developed by local sponsors with the assistance of NRCS for a watershed project that includes descriptions of the watershed, problems to be addressed, works of improvement to be installed, costs of installed works, project benefits, cost-benefit analyses, financing information, and general requirements for O&M.

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§529.3. Administration of Funds.

(a) General Fiscal Provisions. Eligible SWCDs must comply with any applicable provisions within the Manual of Fiscal Operations for Soil and Water Conservation Districts at all times. The Manual of Fiscal Operations for Soil and Water Conservation Districts is approved and periodically amended by the State Board and is available on the State Board's website; hardcopies of this manual may be requested from the State Board.

(b) Sources of funding. Any funding available for O&M grants during a fiscal year will be determined by the State Board out of general revenue appropriated by the Texas Legislature. The amount of funding available for O&M grants will be determined by the State Board for a fiscal year. Other sources of funding may be used for O&M grants by the State Board if applicable and when available. Funds will be allocated by the State Board to eligible SWCDs for use during the fiscal year for which the funds were appropriated, unless the State Board has executed a contract with an eligible SWCD that allows for liquidation of the obligated amount over a period of time that extends beyond the fiscal year.

(c) Allocation and reimbursement. Funds will be administered through an allocation and reimbursement process as specified in §529.5 of this subchapter (relating to Allocation of Funds) and §529.7 of this subchapter (relating to Reimbursements and Reporting Non-State Funded Match).

(d) Activities eligible for reimbursement. Funds may only be used to reimburse eligible SWCDs and subcontractors of their choosing for costs associated with the performance of O&M activities as defined by this subchapter on flood control dams. Eligible SWCDs desiring reimbursement of any activity not specifically listed as an O&M activity in §529.2(9) of this subchapter must contact the State Board prior to initiating the activity for approval. Other activities for which the State Board may reimburse eligible SWCDs and subcontractors include the purchasing of pesticides by the eligible SWCD for use by the SWCD or a subcontractor during the course of carrying out an O&M activity, the purchasing of easements, the administrative costs of eligible SWCDs associated with O&M activities, and any other O&M-related activities that are approved by the State Board at their discretion.

(e) Non-state funded matching requirement. All O&M reimbursement requests will be paid by the State Board at 90-percent of the total reimbursement request amount. Ten (10) percent of the total reimbursement request amount must be paid through funds not originating from state appropriations. Reimbursement requests for O&M activities maybe paid by the State Board up to 100-percent if the flood

control dam on which the activities were performed is a part of a watershed project where the original O&M agreement did not include at least one sponsor empowered by the State of Texas to levy taxes.

(f) In-kind match contributions. All or a portion of the non-state funded matching requirement may be satisfied through "in-kind" contributions. In-kind contributions must be reported to the State Board on a reimbursement request form at the time the form is submitted to the State Board. In-kind match performed prior to the start of the current biennium is not eligible for use as non-state funded match. In-kind match reported in excess of the required amount for a single reimbursement request may be recorded by the State Board for use by eligible SWCDs on future reimbursement requests within the current biennium. In-kind match may not be carried forward into a new biennium. All aspects of reimbursement requests, including the legitimacy of reported in-kind match, are subject to review and approval by the State Board. In-kind match will be reported at rates approved by the State Board.

(g) Standardized rates for in-kind contributions of O&M activities. A standardized set of rates for certain O&M activities will be adopted by the State Board for use in determining the value of in-kind contributions. Standardized rates adopted by the State Board will be made available to eligible SWCDs upon notification of allocation.

(h) Administrative costs of eligible SWCDs. Eligible SWCDs may request a payment for compensation of their administrative costs in an amount not to exceed five (5) percent of the reimbursed amount. Payments for administrative costs must be reported on a reimbursement request at the time of its submission to the State Board.

(i) Utilizing O&M grant funds for structural repair on flood control dams. The State Board, at their discretion, may consider approving the use of O&M funds for structural repair. All requests to use O&M grant funds for structural repair must specify the type of structural repair intended to be performed and must be submitted in writing to the State Board. All requests to use O&M grant funds for structural repair are subject to review and approval by the State Board. Copies of quotations and bid documents must be provided to the State Board upon request. If concurrence from the NRCS and/or TCEQ must be obtained for the specific repair activity, such concurrence must be obtained and provided in writing to the State Board prior to submitting the request for the use of O&M grant funds for structural repair.

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§529.4. Applicability.

(a) Allocations of O&M grant funding will be made only to eligible SWCDs.

(b) Allocations transferred to other sponsors. In cases where the eligible SWCD desires for the State Board to contract directly with another sponsor listed on the O&M agreement for work on flood control dams within the same watershed project, the eligible SWCD must submit a written request to the State Board. Any written agreements providing allowance for one SWCD to perform O&M activities within the boundaries of another SWCD must be submitted to the State Board with the written request. All requests to make allocations to non-SWCD sponsors are subject to review and approval by the State Board. Upon approval, the State Board will notify the eligible SWCD and the other sponsor of the allocation transfer.

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§529.5. Allocation of Funds.

(a) Allocation criteria. When available, the most recent statewide survey of O&M needs and cost-estimates performed by the NRCS may be used by the State Board as a basis for making allocations to eligible SWCDs. The State Board may solicit allocation requests directly from eligible SWCDs.

(b) Prioritization of O&M activities. Eligible SWCDs and other sponsors are responsible for prioritizing the scheduling and performance of O&M activities within the scope of a watershed project.

(c) Notification. Notification of allocations will be provided to eligible SWCDs in writing by the State Board.

(d) Reallocation and efficiency. The State Board may adjust allocations within a fiscal year as eligible SWCD needs and the availability funds change in order to achieve the most efficient use of O&M grant funds. Changes in allocation amounts will be made through consultation with any eligible SWCDs whose allocation amount is affected because of the change, and notification of changes will be provided to affected SWCDs in writing.

(e) Effective dates of allocations. Allocations are approved by the State Board for an effective period of time within the fiscal year for which the funds were appropriated. The effective period for an allocation is determined by the State Board and is provided to eligible SWCDs in writing upon notification.

(f) Contracting. When necessary, the State Board may contract with an eligible SWCD for the performance of O&M activities.

(g) Emergency allocations. The State Board may allocate additional funds to any eligible SWCD for a specific O&M activity or activities in the event that immediate action is necessary to protect human health and safety.

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§529.6. Solicitation of Bids by Eligible SWCDs.

Solicitation of bids will be required for purchases more than \$50,000 in accordance with provisions of §271.024 of the Local Government Code.

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§529.7. Reimbursements and Reporting Non-State Funded Match.

(a) Reimbursement requests. Reimbursement requests for O&M activities are subject to approval by the State Board and must be submitted on forms provided by the State Board.

(b) O&M agreements required.

(1) An O&M agreement must be filed with the State Board at all times for reimbursement of O&M activities. If any amendment is made to an O&M agreement on file with the State Board, the

amended O&M agreement must be submitted to the State Board prior to receiving reimbursement of a request for O&M activities performed under the amended agreement. Failure to submit amended O&M agreements may result in reimbursement requests not being approved by the State Board.

(2) If any sponsor to an O&M agreement determines that the agreement has expired or is otherwise legally invalid so that participation in this program is prohibited or not feasible, then the participating sponsors shall immediately notify the State Board. The participating sponsors shall submit a new O&M agreement within six months of notification to the State Board.

(c) Payment. Upon satisfactory receipt of a reimbursement request, signature of certification, and other required documentation, the State Board shall cause payment to be issued. Payment for a specific O&M activity may not be made until the activity is completed in its entirety for the flood control dam. All needed O&M activities do not need to be completed prior to reimbursement for a single O&M activity on a flood control dam.

(d) In-kind contributions. In-kind contributions intended to satisfy a non-state funded match requirement must be reported on the reimbursement request form at rates approved by the State Board.

(e) Reimbursement only. Payment will be made on a reimbursement basis only. State money may not be provided in advance.

(f) Purchasing easements. Reimbursement of the purchasing of easements for the purposes of performing O&M activities may be approved by the State Board at their discretion. All requests to use O&M grant funds for the purchasing of easements must be approved by the State Board prior to the purchase.

(g) Certification. Reimbursement requests must be approved by an official act of the SWCD and be certified with the signature of the SWCD chairman. Certification of a reimbursement request means the O&M activities listed on the request have been performed to the satisfaction of the SWCD and represents authorization for the State Board to consider causing payment to the contractor identified on the reimbursement request. An eligible SWCD may conduct a vote during an official SWCD meeting to designate a different director or directors of the SWCD other than the chairman to certify by signature on behalf of the SWCD outside of an official SWCD meeting. Designation of an alternate SWCD director or directors for purposes of certifying a reimbursement request must be noted in the official minutes of the SWCD meeting. If the reimbursement request includes O&M activities for which the State Board has adopted a technical standard, an employee of the State Board or the NRCS must certify by signature on the reimbursement request that the O&M activity was performed in accordance with the applicable technical standard prior to the reimbursement request being submitted to the State Board.

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§529.8. Technical Standards for O&M Activities.

Technical standards may be adopted by the State Board for certain O&M activities. Technical standards adopted by the State Board will be made available to eligible SWCDs upon notification of allocation.

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