



October 5, 2018

Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Transmit Via E-mail: commentletters@waterboards.ca.gov

RE: Comment Letter – Proposed Amendments to the Policy for Implementing the Clean Water State Revolving Fund (CWSRF)

Dear Ms. Townsend:

The Rural County Representatives of California represents 36 of California's 58 counties, encompassing nearly 55 percent of the State's land mass and over 10 percent of the State's population. Our Board of Directors is made up of one locally-elected Supervisor from each of our member counties. We appreciate the opportunity to comment on the proposed amendment to the *Policy for Implementing the Clean Water State Revolving Fund (CWSRF)* program.

The CWSRF Policy was written to implement the federal Clean Water Act's CWSRF Program in California. The CWSRF Policy articulates the requirements that are to be met to access these funds and any available complementary financing. Increasingly, the CWSRF is being looked to as a cost-effective means of capitalizing local projects across the state as we look to maximizing the available water supply.

As noted above, the CWSRF is an important vehicle by which to make monies available to those entities needing to upgrade their community's public drinking water facilities. Overall, we believe that the proposed amendments add clarity in a number of areas that will be beneficial for both CWSRF applicants and grantees and for Water Board staff. In particular, we would like to commend the Board for automatically including all Small Severely Disadvantaged Community (Small SDAC), Small Disadvantaged Community (Small DAC), and public health projects on the Fundable List, without regard to priority score. This will help ensure that the neediest and most-impacted communities, many of them in rural areas, get the funding needed for critical infrastructure projects.

We likewise appreciate the definitions of Small DAC and Small SDAC are reasonable, appropriate, and consistent with relevant state law.

With regard to other projects, we have some concern that the proposed Priority Score provisions may have unintended consequences in some cases, diverting funding away from the most critically necessary projects to those of lesser benefit to local communities and the state as a whole. For example, while Delta water quality is unquestionably important, it is not clear why an "improvement" project in this area would score higher ("7") than a project necessary to prevent an impaired waterway "violation or exceedance in the near future" ("6"). We urge the Board to carefully consider the scoring matrix, and make appropriate changes to ensure optimal usage of limited CWSRF funds.

Among the other proposed changes is a requirement that applicants submit a copy of their debt management policy. Since January 1, 2017, issuers of new public debt have been required to adopt a debt management policy (Senate Bill 1029, Hertzberg; Gov. Code, § 8855). Since these requirements are relatively recent, many smaller public entities which have not issued debt within the last two years may not yet have such policy adopted. We would recommend that the requirement to provide such a policy be deferred until after the CWSRF application is approved (i.e., before agreement execution and issuance of associated debt) to allow these smaller agencies additional time to develop their policy while their funding application is under consideration. We would further request that the Water Board consider providing technical assistance to smaller applicants in developing these new policies, to ensure that smaller, less sophisticated districts do not face unnecessary barriers to critical project funding.

We additionally recommend the following revision to the definition of "Authorized Representative" (in Section III):

"Authorized Representative" means the duly appointed member, official, or employee of the applicant/recipient who has the authority to represent the entity and sign documents pertaining to the funding or financing application, certify compliance with applicable state and federal laws, execute the financial assistance agreement and amendments, and certify disbursement requests, provided that the governing body of the applicant/recipient may retain the authority to approve the financial assistance agreement and amendments.

While it is reasonable and customary for a public agency applicant/recipient to designate an individual to execute routine documents, it would not be appropriate for the agency's elected or appointed governing body to give any individual *carte blanche* to execute future agreement amendments with unknown terms, which may increase the risk, cost, debt, or liability assumed by the agency.

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Finally, we requested that legal counsel experienced in representing CWSRF grantees review the proposed Legal Opinion Template. Their comments and suggestions are attached. We request that these changes be made to that document prior to final adoption by the Board.

Thank you again for the opportunity to provide these comments on the Proposed Amendment to the Policy for Implementing the Clean Water State Revolving Fund. If you have any questions, please contact us at (916) 447-4806 or mwarmerdam@rcrcnet.org or awylene@rcrcnet.org.

Sincerely,



MARY-ANN WARMERDAM
Senior Legislative Advocate



ARTHUR WYLENE, ESQ.
RCRC General Counsel

Attachment

COMMENTS ON PROPOSED “FORM OF OPINION OF GENERAL COUNSEL”

- 1) We recommend the following revisions to the first paragraph of the opinion template:

[I/This firm] serve[s] as General Counsel to the [City/County/District] in connection with the Project. This opinion is delivered to the governing body of the [City/County/District], with the expectation that it may be relied upon by the State Water Resources Control Board (“State Water Board”) ~~at the request of the [City/County/District]~~. In connection therewith, I have examined the laws pertaining to the [City/County/District], originals of the Agreement, between the [City/County/District] and the State Water Board (“Agreement”), the [City/County/District]’s authorizing resolution [xxx] adopted on [date], the [City/County/District]’s reimbursement resolution [number] adopted on [DATE], the [City/County/District]’s rate-setting resolution [number] adopted on [DATE], (collectively, “the Resolutions”), the [City/County/District]’s debt management policy, documents related to each of the Material Obligations as set forth in the Agreement, and such other documents, legal opinions, instruments and records, and have made such investigation of law, as I have considered necessary or appropriate for the purpose of this opinion.

- 2) We recommend the following revisions to Section “e” of the opinion template:

To the best of my knowledge and based upon a reasonable investigation, the [City/County/District] has sufficient property rights in the Project property for the purposes contemplated in the Agreement [and has complied with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) with respect to any property acquired for the purposes of the Project. Project property rights extend/s in perpetuity/until [date].]

- 3) We recommend the following revisions to Section “g” of the opinion template:

Without having undertaken an independent investigation, ~~No~~-no facts have come to my attention which lead me to believe that the [City/County/District]’s authorized representative has made any untrue statement of a material fact or omitted or omits to state a material fact or has made misleading statements in the Agreement.

- 4) We recommend the following revisions to Section “h” of the opinion template:

The Agreement has been duly authorized, executed, and delivered, and assuming due authorization, execution and delivery of the Agreement by the State Water Board, constitutes legal, valid, and binding obligation of the [City/County/District] enforceable against the [City/County/District] in accordance with its terms, subject to the laws relating to bankruptcy, insolvency, reorganization, or creditors’ rights generally and to the application of equitable principles, if equitable remedies are sought, and by the

[limitations on legal remedies imposed on actions against \[Cities/Counties/Districts\] in the State of California.](#)

- 5) We recommend adding the following two paragraphs at the end of the opinion template:

I express no opinion regarding any other federal or state tax consequences with respect to the Agreement. I render my opinions under existing statutes, court decisions, and information known as of the date set forth above, and assume no obligation to update, revise or supplement our opinion to reflect any action hereafter taken or not taken, or any facts or circumstances that may hereafter come to our attention, or changes in law or in interpretations thereof that may hereafter occur, or for any other reason.

This opinion is furnished solely for your benefit, and with the expectation that it may be relied upon by the State Water Resources Control Board. It is not to be used, circulated, quoted, or otherwise referred to for any purposes other than the execution and delivery of the Agreement, and may not be relied upon by any other person or entity without my express written permission.