

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING - DIVISION OF FINANCIAL ASSISTANCE  
NOVEMBER 4, 2008**

**ITEM 4**

**SUBJECT**

CONSIDERATION OF A RESOLUTION APPROVING STATE REVOLVING FUND (SRF) FINANCING AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE SRF PROGRAM FOR THE CITY OF MERCED (CITY) WASTEWATER TREATMENT PLANT (WWTP) UPGRADE AND EXPANSION PROJECT (PROJECT); SRF PROJECT NO. C-06-4682-110

**DISCUSSION**

In accordance with the State Water Resources Control Board (State Water Board) *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), amended on July 17, 2007, projects on the adopted Project Priority List (SRF Priority List) need State Water Board approval to receive SRF funding. The State Water Board may approve a preliminary SRF funding commitment after issuance of a Project Facilities Plan Approval (FPA). On August 6, 2008, the Assistant Deputy Director of the Division of Financial Assistance (Division) issued the FPA for the City's Project. The City agreed to the FPA on August 7, 2008. Division staff found that the City's Project is (1) consistent with the policies, regulations, and agreements the State Water Board has adopted governing the internal management of the SRF program, and (2) is on the SRF Priority List adopted by the State Water Board. The State Water Board, on September 2, 2008, adopted the State Fiscal Year 2008/2009 SRF Program Priority List, which included the City's Project.

The City is seeking SRF financing from the State Water Board to upgrade and expand the City's WWTP. The City's WWTP is located in Merced County, and is within the jurisdiction of the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board). The current WWTP has a design average dry weather flow treatment capacity of approximately 10 million gallons per day (MGD). Residential, commercial, industrial users, and the University of California at Merced, contribute wastewater flow to the WWTP. Current treatment consists of primary treatment, secondary treatment, and chlorine disinfection. The WWTP discharges to Hartley Slough. Solids handling consists of a sludge thickener, anaerobic digestion, and open-air drying beds.

The Project will expand treatment capacity from 10 to 12 MGD. It includes construction of an influent pumping station, headworks, equalization basin, and tertiary filtration with chemical conditioning, ultraviolet disinfection, and an aeration structure. These WWTP improvements are necessary to comply with the City's National Pollutant Discharge Elimination System (NPDES) permit No. 5-00-246, to handle anticipated growth, and to replace aging facilities and equipment.

The City prepared an Environmental Impact Report (EIR) for the proposed Project. The City distributed the EIR to the public, and circulated it through the State Clearinghouse (SCH No. 2005101135) for review from August 14, 2006, through September 27, 2006. During the review period, the City received written comments from three state agencies: (1) State Clearinghouse regarding the close of the comment period, (2) State Water Board regarding clarification of mitigation and editorial corrections, and (3) San Joaquin Valley Air Pollution Control District regarding the use of updated documents and compliance with mitigation.

The City responded in writing to all comments. On December 18, 2006, the City certified the EIR, approved the Project, and adopted a Mitigation and Monitoring Plan and a Statement of Overriding Considerations (SOC) for the Project. The City filed a Notice of Determination (NOD) with the Merced County Clerk on December 20, 2006, and with the Governor's Office of Planning and Research, on July 17, 2008. The State Water Board staff reviewed and considered the EIR and associated documents and determined that the Project will not have any significant adverse water quality impacts.

The City adopted an SOC to substantiate its decision to approve the Project, despite environmental impacts due to growth inducement and the loss of 20 acres of agricultural open space. The City found that other considerations justify proceeding with the Project. The Project benefits listed below outweigh the potentially unavoidable significant environmental effects associated with the Project. These potentially unavoidable adverse impacts are an acceptable consequence because of the Project's benefits.

State Water Board staff finds the following specific public benefits:

- (1) The Project will increase the quality of the effluent discharged to Hartley Slough. Higher effluent quality helps fulfill the Central Valley Regional Water Board objective to improve waste discharge quality and water quality within the slough.
- (2) The Project will provide wastewater treatment capacity to meet future demand, as described in the 1997 Merced Vision 2015 General Plan, and the University of California, Merced Campus Long Range Development Plan (UC-Merced LRDP).
- (3) The Project will help fulfill the City's General Plan objective of updating sanitary sewer infrastructure and facilitating build-out of the Specific Urban Development Plan and UC-Merced LRDP.
- (4) The City Council approved a Memorandum of Understanding (MOU) between the City and U.S Fish and Wildlife (USFWS) for processing development applications to ensure protection of sensitive biological species.

State Water Board staff concurs that the Project will result in (1) significant unavoidable impacts to open space and (2) induce growth in the City. Staff also agrees with the City's determination that mitigation of the Project impacts is infeasible. In addition, staff determined that the specific economic, social, technological, and environmental benefits outweigh these unavoidable adverse environmental impacts.

On December 21, 2006, State Water Board staff distributed the EIR to the following federally designated agencies: U.S. Environmental Protection Agency (U.S. EPA); U.S. Army Corps of Engineers; U.S. Department of Agriculture, Natural Resources Conservation Service; and the Federal Emergency Management Agency. The federal review period concluded on February 14, 2007. No comments were received.

State Water Board staff determined that the Project may adversely affect the valley elderberry longhorn beetle and the giant garter snake, which are both federally listed species. On January 10, 2007, the State Water Board staff sent to U.S. EPA a letter requesting formal consultation with USFWS because the proposed Project "May Adversely Affect" federally-listed species. U.S. EPA sent a letter on March 7, 2007, to USFWS to initiate formal consultation under Section 7 of the Endangered Species Act. On September 10, 2007, USFWS requested a Biological Opinion (BO) from the City. The City asked their consulting firm, ESA, to prepare the BO. ESA sent the draft BO to USFWS on October 30, 2007. USFWS subsequently asked the City to enter into an MOU to ensure continued consultation on future development. The City presented the MOU to its Council on June 16, 2008, and the Council approved the MOU via agenda item No. J-17. The MOU between the City and USFWS reflects procedures for processing development applications as a result of the WWTP expansion. On July 2, 2008, the USFWS rendered the final BO via email to the U.S. EPA. U.S. EPA forwarded the electronic version of the BO to the State Water Board on July 8, 2008. Conservation measures identified in the BO and MOU will be included in the SRF financing agreement as Special Conditions.

The State Water Board's Cultural Resources Officer sent a request for concurrence on a finding of "no historic properties affected" and adequacy of "Section 106" compliance to the State Historic Preservation Officer (SHPO) on February 28, 2008. On March 17, 2008, the SHPO concurred. There are no special conditions from SHPO.

In addition, State Water Board staff compared the applicant's information to published air quality standards to determine whether a conformity determination is required. No conformity determination is necessary. Therefore, staff submitted its analysis to U.S. EPA for review and comments. No comments were received.

State Water Board staff will file an NOD with the State Clearinghouse following funding approval.

Based on the Project Report, the construction cost of the Project is \$65 million. However, the City requests \$37 million in SRF financing with a 20-year repayment period, with the first SRF repayment due from the City one year after completion of construction.

The City Council adopted Resolution No. 2008-34, which dedicates wastewater user fees to the repayment of the SRF financing. The City has increased fees to meet the demands of SRF financing repayment, and additional rate increases have been adopted through 2011. The City has the authority to increase wastewater user fees, with ratepayer's approval, to cover all expenses associated with the WWTP.

The City has provided the Division with a schedule containing Project milestones. These dates are included in the Division's FPA letter. In accordance with Section IX (J) of the SRF Policy, the Resolution includes the following sunset date for the Preliminary Funding Commitment (PFC): December 30, 2009, for signing of the SRF Agreement. Division staff requests the authority to approve up to a 90-day extension for good cause.

## **FISCAL IMPACT**

### **Applicant's Finances:**

An independent credit review, performed by California Municipal Statistics Inc. (Calmuni), analyzes the City's ability to enter into an SRF financing agreement for the amount requested. The credit review provides recommendations regarding the financial agreement terms, maximum SRF financing amount, debt parity conditions, financial capacity, and annual reserve fund requirements for the financing agreement.

The City's estimated 2007 median household income (MHI) is \$36,325. This is approximately 65.1 percent of the State of California MHI. The City's population is 75,862; therefore, it does not qualify as a small, disadvantaged community.

The City undertook a wastewater rate analysis in 2006, and must adopt the new rate schedule in accordance with Proposition 218 prior to executing the financing agreement. A \$37 million financing agreement for a 20-year term at 2.6 percent interest will require an annual debt service payment of \$2,384,234. The City proposes to raise monthly rates from \$21.12 in 2005/2006 (0.70 percent MHI) to \$47.30 by 2010/2011 (1.56 percent MHI). Adding the project's debt service to the City's maximum annual debt service will bring total debt service to \$4,305,960. This debt amount will be covered 2.74 times by the 2006/2007 net revenues. However, future net revenues are projected to be less than in previous years due to higher projected operating costs and the need for additional capital expenditures.

The City has two outstanding debt obligations supported by the Waste Water Enterprise Fund. With the information provided by the City, Calmuni analyzed the debt service coverage against the proposed SRF financing agreement, future operation and maintenance costs, and ongoing capital improvement costs. Results indicate the City's proposed net revenues are equal to at least 1.2 times total annual debt service. Calmuni estimated the City's additional financial capacity based on the debt service ratio and suggests a maximum loan amount of \$38.5 million, secured on a parity with existing obligations with a reserve fund of one-year's debt service funded prior to completion of construction.

## SRF Finances:

(as of 09/23/2008)

	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 2012-13
Beginning Balance:	\$307,959,193	\$73,586,873	\$26,536,628	\$95,042,636	\$257,203,486
Estimated Repayments	\$201,056,093	\$217,382,264	\$227,382,264	\$237,382,264	\$247,382,264
Debt Service on Revenue Bonds	(\$31,893,104)	(\$31,758,441)	(\$31,456,429)	(\$30,228,204)	(\$27,714,204)
Estimated Capitalization Grants	\$46,965,399	\$45,000,000	\$0	\$0	\$0
State G.O. Bond proceeds (less state admin. match)	\$13,414,123	\$0	\$0	\$0	\$0
Local Match Credits	\$26,197,564	\$4,920,389	\$760,015	\$666,280	\$749,882
Est. SMIF Interest:	\$10,674,552	\$10,000,000	\$10,000,000	\$8,000,000	\$2,000,000
Estimated Disbursements	(\$433,037,195)	(\$162,302,027)	(\$71,795,728)	(\$17,578,557)	(\$9,499,200)
<b>Subtotal</b>	<b>\$141,336,626</b>	<b>\$156,829,058</b>	<b>\$161,426,750</b>	<b>\$293,284,420</b>	<b>\$470,122,228</b>
City of Merced, 4682-110	(\$17,000,000)	(\$20,000,000)			
Rosamond Community Services Dist, 4148-110	(\$8,350,000)				
LA CSD - Palmdale WRP, 4746-110,120,130,140	(\$29,010,000)	(\$71,640,000)	(\$45,000,000)	(\$33,750,000)	
City of Redding, 4971-230,-240,-250,-260	(\$4,883,253)	(\$15,358,930)	(\$14,584,114)	(\$2,330,934)	
City of Brawley, 4502-110	(\$1,400,000)	(\$16,800,000)	(\$6,800,000)		
City of Antioch, 5172-110	(\$2,500,000)				
San Andreas Sanitary District, 5179-110	(\$4,606,500)	(\$6,493,500)			
<b>Balance</b>	<b>\$73,586,873</b>	<b>\$26,536,628</b>	<b>\$95,042,636</b>	<b>\$257,203,486</b>	<b>\$470,122,228</b>

### Notes:

- Estimated Repayments include repayments from existing and future SRF financings.
- Estimated disbursements include disbursements remaining on executed loans (and other financings) and planned disbursements on projects with preliminary financing commitments. Local Match credits are the anticipated funds that will be contributed for local match financings included in "Estimated Disbursements."

## REGIONAL WATER BOARD IMPACT

This Project will help the City meet conditions of the NPDES permit.

## POLICY ISSUE

Should the State Water Board:

1. Adopt a Statement of Overriding Considerations for this Project?
2. Approve a \$37 million SRF PFC for the proposed Project, including a 20-year repayment period, with the first repayment due one year after completion of construction?
3. Condition this approval by withdrawing the SRF PFC if the City does not sign the SRF Agreement by December 30, 2009, in accordance with Section IX (J) of the Policy? Should the Division staff have the discretion to approve up to a 90-day extension for good cause?
4. Condition the financing agreement, as determined by the City's credit review, with the following terms:

- a. The financing agreement shall be limited to a maximum of \$38.5 million unless information supporting the credit review changes and a supplemental credit review is performed.
  - b. The financing agreement shall be secured on parity with the outstanding Series 2004A Bonds.
  - c. The City shall fund a reserve fund of one year's debt service prior to completion of construction date.
5. Require special conditions from USFWS and the MOU as Special Conditions in the City's SRF financing agreement?

### **STAFF RECOMMENDATION**

The State Water Board should:

1. Adopt a Statement of Overriding Considerations for this Project;
2. Approve an SRF PFC for the proposed Project, including a 20-year repayment period, with the first repayment due one year after completion of construction, for \$37 million;
3. Condition this approval by withdrawing the SRF PFC if the City does not sign the SRF Financing Agreement by December 30, 2009, in accordance with Section IX (J) of the Policy. The Division staff should have the discretion to approve up to a 90-day extension for good cause;
4. Condition the financing agreement, as determined by the City's credit review, with the following terms:
  - a. The financing agreement shall be limited to a maximum of \$38.5 million unless information supporting the credit review changes and a supplemental credit review is performed.
  - b. The financing agreement shall be secured on parity with the outstanding Series 2004A Bonds.
  - c. The City shall fund a reserve fund of one year's debt service prior to completion of construction date; and
5. Require special conditions from USFWS and the MOU as Special Conditions in the City's SRF financing agreement.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2008-

APPROVING STATE REVOLVING FUND (SRF) FINANCING AND ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE SRF PROGRAM FOR CITY OF MERCED (CITY) WASTEWATER TREATMENT PLANT (WWTP) UPGRADE AND EXPANSION PROJECT (PROJECT); SRF PROJECT NO. C-06-4682-110

### WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the "*Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities*" (Policy) and amended it on July 17, 2007;
2. The State Water Board, in September 2008, adopted the State Fiscal Year 2008/2009 SRF Program Priority List which included the City's Project in Priority Class C;
3. The Division of Financial Assistance (Division) approved the Facility Plan for the City's Project on August 6, 2008. The City agreed to the Facilities Plan Approval on August 7, 2008;
4. The City prepared an Environmental Impact Report (EIR) for the proposed Project, distributed it to the public, and circulated it through the State Clearinghouse (SCH No. 2005101135);
5. The City certified the EIR, approved the Project, and adopted a Mitigation and Monitoring Plan and a Statement of Overriding Considerations for the Project on December 18, 2006;
6. The City filed a Notice of Determination with the Merced County Clerk on December 20, 2006, and with the Governor's Office of Planning and Research on July 17, 2008;
7. USFWS identified conservation measures in their Biological Opinion to minimize potential adverse Project effects on the valley elderberry longhorn beetle and the giant garter snake. The City Council approved on June 16, 2008, a Memorandum of Understanding (MOU) between the City and U.S. Fish and Wildlife (USFWS) for processing development applications as a result of the WWTP expansion. The terms and conditions from USFWS and the MOU will be included as Special Conditions in exhibit D of the City's SRF financing agreement;
8. The State Water Board has determined that the significant unavoidable adverse impacts resulting from the Project are growth inducement and the loss of 20 acres of open space resulting from the expansion of the WWTP;

# DRAFT

9. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh the unavoidable adverse environmental impacts from the loss of farmland and inducement of growth:
  - a. The Project will increase the quality of the effluent discharged into Hartley Slough. Higher effluent quality helps fulfill the Central Valley Regional Water Quality Control Board objective to improve waste discharge quality and water quality within the slough.
  - b. The Project will provide wastewater treatment capacity to meet future demand, as described in the 1997 Merced Vision 2015 General Plan, and the University of California, Merced Campus Long Range Development Plan (UC-Merced LRDP).
  - c. The Project will help fulfill the City's General Plan objective of updating sanitary sewer infrastructure and facilitating build-out of the Specific Urban Development Plan and UC-Merced LRDP.
  - d. The City Council approved an MOU between the City and USFWS for processing development applications to ensure protection of sensitive biological species.
10. State Water Board staff reviewed and considered the applicable environmental documents and determined that the Project will not result in any significant adverse water quality impacts; and
11. An independent credit review was completed on September 10, 2008, recommending a credit limit of \$38.5 million for this project.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the above Statement of Overriding Considerations for this Project;
2. Approves a \$37 million SRF Preliminary Funding Commitment (PFC) for the proposed Project, including a 20-year repayment period, with the first repayment due one year after completion of construction;
3. Conditions this approval by withdrawing the SRF PFC if the City does not sign the SRF financing agreement by December 30, 2009, in accordance with Section IX (J) of the Policy. The Division staff has the discretion to approve up to a 90-day extension for good cause;
4. Conditions the financing agreement, as determined by the City's credit review, with the following terms:
  - a. The financing agreement shall be limited to a maximum of \$38.5 million unless information supporting the credit review changes and a supplemental credit review is performed.

## **D R A F T**

- b. The financing agreement shall be secured on parity with the outstanding Series 2004A Bonds.
  - c. The City shall fund a reserve fund of one year's debt service prior to completion of construction date; and
5. Conditions this approval with the terms and conditions from USFWS and the MOU as Special Conditions in the City's SRF financing agreement.

### **CERTIFICATION**

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on November 4, 2008.

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Jeanine Townsend  
Clerk to the Board