

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING - DIVISION OF FINANCIAL ASSISTANCE  
DECEMBER 1, 2009**

**ITEM 4**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF WILLIAMS (CITY), WASTEWATER TREATMENT PLANT (WWTP) IMPROVEMENT PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4049-110

**DISCUSSION**

In accordance with the State Water Resources Control Board (State Water Board) *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities* (Policy), amended on March 17, 2009, projects on the adopted Project Priority List need State Water Board approval to receive CWSRF funding. The State Water Board may approve a CWSRF PFC after issuance of a Project Facility Plan Approval (FPA). On November 10, 2009, the Assistant Deputy Director of the Division of Financial Assistance (Division) issued the amended FPA for the City's Project. The City agreed to the amended FPA on November 10, 2009. 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 CWSRF Program, and (2) is on the CWSRF Program Project Priority List adopted by the State Water Board. The State Water Board, on September 15, 2009, adopted the State Fiscal Year (SFY) 2009/2010 CWSRF Program Project Priority List, which included the City's Project (which is also known as the City of Williams Wastewater Treatment Facility Compliance Upgrade and Expansion Project) in Priority Class C. The Project is also included in the CWSRF Program Intended Use Plan for SFY 2009/2010.

The City is pursuing funding to upgrade the City's WWTP. The Colusa County Grand Jury produced six (6) findings regarding the operation of the City and its financial management practices as part of the *2008-2009 Final Report* (Grand Jury Report), dated June 29, 2009. Due to the Grand Jury findings, funding of the Project is not routine, and the Project's PFC must be presented to the State Water Board for consideration. More information on the Grand Jury findings and recommendations is presented in the Grand Jury Summary section.

**PROJECT INFORMATION**

The WWTP is located in the northern part of the City at the intersection of Highway 20 and Interstate 5. The City is located in Colusa County and under the jurisdiction of the Central Valley Regional Water Quality Control Board (Central Valley Water Board).

The WWTP currently treats 0.4 million gallons per day (MGD) (average dry weather flow [ADWF]) of influent from residential and commercial sources. The collection system includes no major industrial sources and there are none expected that would significantly alter wastewater characteristics. The City treats its wastewater using aerated ponds with chlorine disinfection and disposes of the treated wastewater via a discharge to Salt Creek.

Upgrades must be made to the existing WWTP to address insufficient treatment processes and to come into compliance with Waste Discharge Requirements (WDR) Order No. R5-2008-0185 (National Pollutant Discharge Elimination System [NPDES] permit No. CA0077933).

The Project consists of upgrading the current WWTP to treat effluent to a tertiary level at an ADWF of 0.5 MGD (permitted WWTP capacity). The Project consists of an influent pump station, headworks, secondary treatment system, filtration, ultraviolet disinfection, reaeration, chemical facilities, solids handling facilities, equalization basin, laboratory/administration building, electrical facilities, and ancillary facilities required for proper WWTP operation.

## GRAND JURY SUMMARY

The Grand Jury Report was issued on June 29, 2009. The City Council approved responses to the Grand Jury Report on August 12, 2009, and the City Council responded to the Grand Jury Report in a letter dated August 13, 2009. The first reporting date regarding the City's actions and responses is due to the Grand Jury by January 1, 2010. The final reporting date is July 1, 2010, by which time the City expects to have implemented all aspects outlined in their August 13, 2009, response letter. A summary of the Colusa County Grand Jury findings, along with the City's responses and updates on progress, are provided in the table below.

#	Summary of Finding	City's Response to Finding and Updates
1	<p>"Weak internal controls provide little assurance that the City of Williams uses public funds appropriately." This finding indicates that the City donated money from its operating budget to an organization claiming to be a nonprofit entity. The entity only recently, April 2009, complied with the necessary filing requirements to be recognized by the Internal Revenue Service as a 501(c)(3) organization. By donating money to the entity, the City assumed the oversight responsibility. The City did not request any documents supporting the entity's tax exempt or nonprofit status. The City also did not request documentation to support the expenses incurred by the entity.</p> <p>Some City Council members that are directly involved with the entity or have family members involved with the entity did not recuse themselves from the decision-making process that benefited the entity. The current president of the entity is a close relative of the Mayor. At the time the funds were awarded another City Council member's spouse was acting as the entity's treasurer. This City Council member abstained from voting on issues regarding the entity; however, the Mayor did not.</p>	<p>The City does not believe that the organization intentionally misrepresented itself as a nonprofit. When the entity was made aware of its status, the entity immediately engaged legal help to complete the process and obtain tax exempt status.</p> <p>The entity's income and expense statements have been disclosed to the City and the Grand Jury. The statements show that the expenditures were appropriately applied to community events that benefited the City's residents.</p> <p>The City Council members that are involved with the entity are not constrained from decisions involving donations to the entity because the members do not have a financial interest in the outcome. No City Council members or family members have benefited financially from any donations to the entity.</p>
2	<p>"The City circumvented its procurement process when it awarded a project to a contractor with ties to a city official." This finding indicates that the City did not utilize a state mandated competitive bidding process when awarding work that exceeds \$7,500. The process was clearly circumvented when the</p>	<p>The Grand Jury Committee found that the City paid a vendor over \$8,000 for labor on painting, tile-setting, and minor electrical work. The City states that these are three separate projects, and there is no evidence that any one of the projects required the expenditure of over \$5,000. Accordingly, the City believes that it</p>

#	Summary of Finding	City's Response to Finding and Updates
	<p>City awarded a small project to a local vendor who is closely related to a City Council member (i.e., Mayor's spouse). The project was for painting and tile work at City Hall. It would appear that the contractor may have split the invoices to avoid reaching the \$7,500 threshold. The total cost of the invoices exceeded \$8,000 and only itemized labor. The cost of materials was paid directly by the City to a local merchant.</p>	<p>did not violate the competitive bidding statute, nor did the City unlawfully split a single project into separate projects to avoid the bidding requirement.</p> <p>The City's Municipal Code sets forth a threshold of \$7,500 for soliciting bids on "purchases and contracts for supplies and equipment." (Williams Municipal Code section 3.28.080.) There is no evidence that the City paid more than \$7,500 for materials or supplies related to each of the above-referenced projects.</p>
3	<p>"The City's internal financial controls to safeguard public funds are inadequate." This finding indicates that the City relies on inadequate internal controls and runs the risk of fraud and untimely detection of such activities. During the Grand Jury review, the City's finance unit consisted of two (2) employees. The employees were siblings and responsible for the incoming and outgoing City funds. As of January 2009, the City has taken measures to add additional staff to its finance unit.</p>	<p>The siblings no longer constitute the entire unit. One sibling has been discharged and the second sibling has been transferred to another department. The finance unit is still comprised of only two (2) employees. The two employees currently work with the Municipal Finance Consultant (Consultant). The employees will be supervised by the Finance Officer after one is hired. An Office Assistant is presently being recruited which will relieve the Finance Department of general City Hall support duties.</p>
4	<p>"The City exercised poor judgment in the recruiting and selection of a Finance Officer." The recently departed Finance Officer did not have appropriate credentials to operate in this capacity. The only experience the recently departed Finance Officer had was working closely with the previous Finance Officer. The recently departed Finance Officer lacked supervisory experience in an accounting setting and did not possess an accounting degree. A number of more qualified candidates applied for the position, but the City eliminated the experience and education requirements and hired the recently departed Finance Officer. The elimination of the requirements insinuates favoritism and preferential treatment.</p>	<p>The City replaced the former City Finance Officer with an experienced Consultant. The Consultant is the recently retired City Finance Director for the City of Woodland and has over 25 years of service in accounting, auditing, and finance. The Consultant also possesses the education commensurate to such a position. The position description for the Finance Officer has been revised. Recruitment of a Finance Officer is anticipated to begin in December 2009. The City plans to hire a new Finance Officer, with the assistance of the City Administrator and input from the City's Consultant, by April 1, 2010.</p>
5	<p>"The City of Williams failed to adequately monitor its budget for most of fiscal year [FY] 2008-2009," which increased the City's risk to overspend. The City relies upon a finance committee (consists of two City Council members, the finance officer, and the City Administrator) to prepare financial reports. The financial reports are supposed to identify surpluses or deficits in the City's funds. The committee failed to meet for the first nine (9) months of the FY 2008-2009. At the first meeting in April 2009 the committee discovered that some of the City's funds were either close to being overdrawn or had much less money than anticipated. The recently departed Finance Officer failed to perform reconciliations for most of the FY. Reconciliations are an important tool for the City to identify financial health.</p>	<p>The Consultant is working to improve the functionality and adequacy of the City's accounting system, as well as administrative communications between the departments. The City has also worked to improve the operational processes and procedures that address appropriate accounting, reporting, and review of financial data. City staff has spent considerable time evaluating the subsystems (payroll, accounts payable, utility billing, bank reconciliations) and has a very good understanding of how the system works and what information needs to be updated in applicable program data tables. The City completed comprehensive training with its financial software vendor on October 20-21, 2009. The City has developed and documented procedures (cost program, reconciliations, journal entries, and recording bounced checks) and plans on developing a detailed operation manual on all major processes</p>

#	Summary of Finding	City's Response to Finding and Updates
		prior to January 1, 2010. The audited FY 2008-2009 financial statement will be provided to the Division by December 1, 2009.
6	"Disregard of Risk Management issues by public officials exposed the City to potential liability." City officials, including the recently departed Finance Officer, acting as the City's Risk Manager, were involved in covering up an accusation of inappropriate conduct by a City employee who acted in a supervisory capacity.	The City agrees with this finding and has corrected the conditions that may have contributed to a negative work environment. The City hired a new City Administrator in August 2009. The City provided both ethics and sexual harassment training, as required by law, to its City Council members and supervisory employees, and will continue to do so. The City Council members complete ethics training within one year of their election and every two years thereafter, as required by law (AB 1234 [Statutes 2005, Chapter 700]). Supervisory employees receive sexual harassment prevention training within six months of their employment and every two years thereafter, as required by law (AB 1825 [Statutes 2004, Chapter 933]).

The Colusa County Grand Jury recommends the following to address the inefficiencies or improper acts identified and to prevent similar acts from occurring. *(The City's response to each recommendation is shown in parentheses.)*

- Identify the tax status of non-governmental entities that are requesting City funds and implement a mechanism requiring these entities to document and report how funds are used. *(The City Council has committed to requiring an accounting each year of how donations to nonprofit entities are spent in the preceding FY. The first such accounting occurred at the August 12, 2009, City Council meeting. For any FY in which the City donates money to a non-governmental entity, the City Council will require an account of how such donations were spent at a public meeting no later than 45 days after the close of the FY.)*
- Institute a yearly review process for identification of any actual or potential conflict of interest determinations with appointed and/or elected officials. *(The City Attorney encourages ongoing communication with each City Council member to identify potential conflicts of interest on a continuous basis. City Council members receive biannual ethics training and file annual Statements of Financial Interest. See response to next bullet for additional information on how the City Council addresses conflicts of interest.)*
- Create a policy that requires public officials with ties to entities requesting City funds to recuse themselves from the decision making process. *(The City Attorney advises officials that have a financial interest in a decision to recuse themselves from the decision-making process. The City has a formal Conflict of Interest Code that was last amended by Resolution No. 07-11 on August 8, 2007. Pursuant to this policy, the City Clerk has all elected officials and senior management complete and file Fair Political Practices Commission Form 700 disclosure statements annually. The policy describes the process of recusal from decisions when an official has a conflict of interest. Recusals are documented in the City Council meeting minutes.)*

- To award small projects that appear to fall under the \$7,500 threshold, the City should award these projects based on an agreed total cost that is guaranteed not to exceed the threshold limit. This may also require the City to be aware of the total cost of materials and include this amount if it decides to purchase the material for a contractor. *(The City complies with and will continue to comply with the state-mandated competitive bid process for all public construction projects with a value over \$5,000 and with its own process for competitively bidding purchases and contracts of supplies and equipment when the estimated value exceeds \$7,500.)*
- Identify incompatible areas within the finance unit and ensure that the duties are adequately separated. *(The City will staff the finance department with advice and guidance from its Consultant to ensure adequate separation of duties. The duties were effectively separated on July 1, 2009. Procedures are being developed and an operations manual will be in place prior to January 1, 2010.)*
- The City should identify the appropriate knowledge, skills, and abilities prior to posting a vacant or open position to ensure that staff has the necessary skills to operate in these positions. *(The City will require appropriate education and experience qualifications, and evaluate these qualifications as part of the hiring process for the Finance Officer and other City positions. The Finance Officer position will be advertised in December 2009 with an expected hire date of no later than April 1, 2010.)*
- To reestablish the value of the budget monitoring mechanism as an essential planning and review tool, the City Council should continue to make inquiries from the finance committee on budget-to-actual figures, making adjustments to expenditures promptly if needed to balance the budget. Put in place the staff necessary to produce accurate and timely financial information. The finance committee must meet on a fixed schedule and review support documentation for the numbers and projections. *(The City Council established a monthly meeting and reporting schedule for the Finance Committee at its August 12, 2009, meeting. The Finance Committee meets on the Tuesday prior to the City Council second monthly meeting. The Finance Committee report is a standing report on the City Council's agenda.)*
- Take the appropriate steps to prevent staff from engaging in misconduct that place the City at risk of legal action; the City needs to follow its established, official chain of command to legally address these instances of misconduct in a timely fashion. Moreover, it should ensure that any actions it undertakes are acceptable to address allegations of instances of misconduct and that it adequately documents actions it has taken in this area. *(The Finance Officer also serves as the Human Resource Officer for the City. When a new Finance Officer is employed he or she will continue to serve in that role. Until that time, the Police Chief will assume the role of Human Resource Officer. The City provided training to all employees regarding the reporting of workplace misconduct to clarify the chain of command for such complaints on September 2, 2009. Additionally training takes place for each employee when hired as part of his or her orientation. The policy is included in the City's Personnel Manual.)*

## **ENVIRONMENTAL REVIEW**

The City prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for the Project and submitted it to the Governor's Office of Planning and Research (OPR) on November 27, 2007, for a 30-day public review period (SCH No. 20071121050). The public comment period ran from November 27 through December 27, 2007.

The City received one comment letter from the State Water Board regarding the air quality attainment status for particulate matter less than 10 microns (PM<sub>10</sub>), and clarification of Project phasing to avoid impacts to wetlands and other waters of the United States.

The City responded to the State Water Board comments in the January 2008 version of the IS/MND. The air quality issues were resolved in the City's documentation submitted to the State Water Board. Wetland concerns were further mitigated by reducing the Project's footprint, and moving construction activities into an area of an existing aeration pond. The City did not receive any other written or oral comments on the IS/MND prior to, or at its January 30, 2008, public hearing. The City adopted the IS/MND and a Mitigation Monitoring and Reporting Program on January 30, 2008, and filed a Notice of Determination (NOD) with the Colusa County Clerk's Office on February 8, 2008, and with the Governor's Office of Planning and Research (OPR) on February 13, 2008.

State Water Board staff reviewed and considered the applicable environmental documents and determined that the Project would not result in any significant adverse water quality impacts. A Tier II review was applied. The City identified conservation measures to avoid impacts to wetlands, the giant garter snake (*Thamnophis gigas*), and the vernal pool tadpole shrimp (*Lepidurus packardii*). These measures will be included as special conditions under Exhibit D of the CWSRF financing agreement.

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

## **FISCAL IMPACT**

### **Applicant's Finances**

An independent credit review analyzed the City's ability to enter into a CWSRF financing agreement for the amount requested. The credit review provides recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity, and requirements for the financing agreement.

The City's estimated 2008 median household income (MHI) is \$40,824, which is approximately 69.9 percent of the State of California's MHI. The City qualifies as a disadvantaged community because the community's MHI is less than 80 percent of the State of California's MHI. The City's estimated 2008 population is 4,875 persons, which qualifies the City as a small (less than 20,000 persons) community. Additionally, in November 2008, the City completed the Proposition 218 process for wastewater rate increases through 2012/2013 with residential base monthly wastewater rates of \$74.27 in 2012, which results in wastewater rates that are 2.18 percent of the community's 2008 MHI.

Per Section X.D.a of the Policy, as a small disadvantaged community with adopted wastewater rates that are at least 1.5 percent of the community's 2008 MHI, the City qualifies for extended term financing (i.e., a 30-year financing term). Additionally, per Section X.D.b of the Policy, the City may receive a reduced interest rate of no less than zero percent (0%) if necessary to bring rates down to 1.5 percent of the community MHI. While an interest rate of zero percent (0%) will not reduce the City's wastewater rates, the reduced interest rate will allow the City to fund and complete the Project. A 30-year \$16,918,943 financing amount at zero percent (0%) would require annual debt service payments of \$563,965 (including the cost of capitalizing interest for 24 months during construction). The 2011/2012 net revenues of the Sewer Enterprise Fund and the Sewer Impact Fund will provide debt service coverage of at least 1.34 times all debt.

The City currently has one debt obligation outstanding that is secured by revenues from the Sewer Enterprise Fund, as outlined in the table below.

Original Principal	Issue Date	Project Description/Title	Matures	Outstanding Principal (as of 6/30/08)
\$315,000	7/1/1970	Improve Wastewater Infrastructure (Farmers Home Administration)	7/1/2010*	\$35,000
*The final payment will be completed before payment of the CWSRF financing begins. Therefore, the debt was not used to determine the City's CWSRF debt capacity.				

In a letter dated October 20, 2009, from Capmark, the entity administering the Farmers Home Administration (FHA) debt, Capmark approved the City's request to take on an additional \$17,029,900 in CWSRF financing and requested that the Division notify Capmark if the City defaults on the CWSRF financing agreement.

The credit review recommended a maximum financing amount of \$10 million, assuming a 20-year term at a one percent (1%) interest rate. Assuming a 30-year payment period and a zero percent (0%) interest rate, staff recommends a maximum financing amount of \$17 million.

The final financing amount and interest rate may be modified based on the Approval of Award (AOA) determination and the financing agreement will be updated accordingly.

#### CWSRF PROGRAM FISCAL IMPACT

As of 10/28/2009:	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 2012-13	SFY 2013-14
Beginning Balance	\$425,553,508	\$63,526,623	\$102,027,550	\$241,498,413	\$465,124,859
Estimated Repayments	\$217,125,812	\$227,125,812	\$237,125,812	\$247,125,812	\$257,125,812
Debt Service on Revenue Bonds	(\$31,758,441)	(\$31,456,429)	(\$30,228,204)	(\$27,714,204)	(\$23,821,829)
Estimated Capitalization Grants	\$46,720,999	\$163,200,000	\$30,000,000	\$30,000,000	\$30,000,000
ARRA Grant					
State G.O. Bond Proceeds	\$153,477	\$0	\$0	\$0	\$0
Local Match Credits	\$10,280,451	\$9,019,153	\$1,923,064	\$833,350	\$833,350
SMIF Interest	\$8,000,000	\$8,000,000	\$8,000,000	\$8,000,000	\$8,000,000
Estimated Disbursements	(\$580,864,272)	(\$308,347,609)	(\$92,141,499)	(\$20,118,512)	(\$12,819,892)
<b>Subtotal</b>	<b>\$95,211,534</b>	<b>\$131,067,550</b>	<b>\$256,706,723</b>	<b>\$479,624,859</b>	<b>\$724,442,301</b>
<b>Proposed Projects Estimated Disbursements</b>					
City of Williams, #4049-110	(\$6,200,633)	(\$9,800,000)	(\$918,310)		
Elsinore Valley Municipal Water District (Wildomar), #4313-110	(\$3,784,278)				
Lake Arrowhead CSD, #4352-210	(\$3,250,000)	(\$3,000,000)	(\$750,000)		
City of San Diego (Point Loma Grit Process), #4395-110	(\$6,600,000)	(\$4,000,000)	(\$13,500,000)	(\$14,500,000)	(\$7,819,892)
City of Oakdale, #4688-110	(\$6,300,000)	(\$6,690,000)	(\$40,000)		
Fairfield-Suisun Sewer District (FSSD Ultraviolet Disinf.), #5208-110	(\$5,550,000)	(\$5,550,000)			
Ending Balance on June 30:	<b>\$63,526,623</b>	<b>\$102,027,550</b>	<b>\$241,498,413</b>	<b>\$465,124,859</b>	<b>\$716,622,409</b>
Notes:					
<ul style="list-style-type: none"> <li>• Estimated repayments include repayments from existing and future financing.</li> <li>• Estimated disbursements include disbursements remaining on executed financing and planned disbursements on projects with preliminary funding commitments. Local match credits are the anticipated funds that will be contributed for local match financing included in "Estimated Disbursements."</li> </ul>					

## REGIONAL BOARD IMPACT

The City's WWTP operates under WDR Order No. R5-2008-0185 and NPDES Permit No. CA0077933, issued under the Central Valley Water Board. The City is currently under Time Schedule Order R5-2008-0139, which requires the City to achieve full compliance by October 1, 2010. The Project will allow the City to comply with its WDR/NPDES Permit.

## POLICY ISSUE

Should the State Water Board:

1. Approve a CWSRF PFC of \$16,918,943 for the City's Project, with a repayment period of 30 years at a zero percent (0%) interest rate? The first repayment shall be due one year after completion of construction. Per Section X(F) of the Policy, if at any time the requested financing amount exceeds the PFC amount by more than fifty percent (50%) or the credit limit, whichever is less, the Project must receive re-approval of the PFC;
2. Condition the financing agreement, as determined by the City's credit review, with the following items:
  - a. The financing agreement shall be secured with a pledge of net revenues of the user fees, also known as the Sewer Enterprise Fund and the Sewer Impact Fund;
  - b. The City shall establish a reserve fund, equal to one year's debt service, prior to the completion of construction date;
  - c. The City shall fund a Rate Stabilization Fund equal to the first year's payment of \$563,965, from sewer service charges prior to the due date of the first payment;
  - d. The financing agreement shall be limited to a maximum of \$17 million (at zero percent [0%] interest rate with a 30-year term);
  - e. The City shall establish rates and charges sufficient to generate net revenues equal to at least 1.25 times annual debt service?
3. Condition this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by January 30, 2010? In accordance with Section IX(K)(3) of the Policy, the Deputy Director of the Division or designee may approve up to a 120-day extension of the PFC for good cause;
4. Condition this approval such that the City must prepare and submit, as part of the AOA, a cost analysis comparing the cost to construct Project facilities based on the eligible peak wet weather flow (PWWF) (i.e., 2.11 MGD) to the cost to construct the Project facilities with adequate capacity to accommodate actual peak flows? Based on that analysis, the Division will make a determination as to any ineligible incremental costs;
5. Condition the financing agreement to require the City to implement a public education program for two years beginning no later than June 1, 2010, since 12.6 percent (12.6%) of the ratepayers protested the rate increase during the Proposition 218 process?

6. Condition the financing agreement to require the City to implement the measures identified in the Initial Study/Mitigated Negative Declaration to avoid impacts to wetlands, the giant garter snake, and the vernal pool tadpole shrimp? These measures will be included as special conditions in Exhibit D of the City's CWSRF financing agreement;
7. Condition the financing agreement to require the City to maintain wastewater rates adequate for proper long-term operation and maintenance over the useful life of the Project (i.e., at least 30 years after the initiation of operations) and CWSRF Program payments? The City must raise wastewater rates if necessary to achieve this goal, and may not lower wastewater rates without Division approval;
8. Condition the financing agreement to require the City to obtain written approval from the FHA, or appropriate entity, if the financing amount is increased above \$17,029,900?
9. Condition the financing agreement to require the City to:
  - a. Submit statements twice a year verifying the coverage ratio is maintained in the payment account for the initial seven (7) years of the financing agreement, at which time the need for this requirement will be revisited;
  - b. Submit monthly construction progress reports;
  - c. Provide copies of the audited Fiscal Year (FY) 2008-2009 financial statements and the adopted budget plan (with resolution and/or City Council meeting minutes) by December 1, 2009;
  - d. Hire a qualified Finance Officer by no later than April 1, 2010, unless the Division grants an extension based on a demonstration of good cause by the City. CWSRF Program disbursements will not be processed after April 1, 2010, unless the City demonstrates compliance with this condition or an extension is granted by the Division;
  - e. Submit a comprehensive plan that addresses the Grand Jury Report findings and recommendations, including specific actions taken and proposed (with anticipated completion dates). The plan must be adopted by the City Council and submitted to the Division by January 30, 2010; and
  - f. Submit audited financial statements for the next five (5) FYs, FY 2009-2010 through FY 2013-2014? Each FY's audited financial statements shall be provided to the Division by December 30 of each year.

## **STAFF RECOMMENDATION**

The State Water Board should:

1. Approve a CWSRF PFC of \$16,918,943 for the City's Project, with a repayment period of 30 years at a zero percent (0%) interest rate. The first repayment shall be due one year after completion of construction. Per Section X(F) of the Policy, if at any time the requested financing amount exceeds the PFC amount by more than fifty percent (50%) or the credit limit, whichever is less, the Project must receive re-approval of the PFC;

2. Condition the financing agreement, as determined by the City's credit review, with the following items:
  - a. The financing agreement shall be secured with a pledge of net revenues of the user fees, also known as the Sewer Enterprise Fund and the Sewer Impact Fund;
  - b. The City shall establish a reserve fund, equal to one year's debt service, prior to the completion of construction date;
  - c. The City shall fund a Rate Stabilization Fund equal to the first year's payment of \$563,965, from sewer service charges prior to the due date of the first payment;
  - d. The financing agreement shall be limited to a maximum of \$17 million (at zero percent [0%] interest rate with a 30-year term); and
  - e. The City shall establish rates and charges sufficient to generate net revenues equal to at least 1.25 times annual debt service;
3. Condition this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by January 30, 2010. In accordance with Section IX(K)(3) of the Policy, the Deputy Director of the Division or designee may approve up to a 120-day extension of the PFC for good cause;
4. Condition this approval such that the City must prepare and submit, as part of the AOA, a cost analysis comparing the cost to construct Project facilities based on the eligible PWWF (i.e., 2.11 MGD) to the cost to construct the Project facilities with adequate capacity to accommodate actual peak flows. Based on that analysis, the Division will make a determination as to any ineligible incremental costs;
5. Condition the financing agreement to require the City to implement a public education program for two years beginning no later than June 1, 2010, since 12.6 percent (12.6%) of the ratepayers protested the rate increase during the Proposition 218 process;
6. Condition the financing agreement to require the City to implement the measures identified in the Initial Study/Mitigated Negative Declaration to avoid impacts to wetlands, the giant garter snake, and the vernal pool tadpole shrimp. These measures will be included as special conditions in Exhibit D of the City's CWSRF financing agreement;
7. Condition the financing agreement to require the City to maintain wastewater rates adequate for proper long-term operation and maintenance over the useful life of the Project (i.e., at least 30 years after the initiation of operations) and CWSRF Program payments. The City must raise wastewater rates if necessary to achieve this goal, and may not lower wastewater rates without Division approval;
8. Condition the financing agreement to require the City to obtain written approval from the FHA, or appropriate entity, if the financing amount is increased above \$17,029,900; and
9. Condition the financing agreement to require the City to:
  - a. Submit statements twice a year verifying the coverage ratio is maintained in the payment account for the initial seven (7) years of the financing agreement, at which time the need for this requirement will be revisited;
  - b. Submit monthly construction progress reports;

- c. Provide copies of the audited FY 2008-2009 financial statements and the adopted budget plan (with resolution and/or City Council meeting minutes) by December 1, 2009;
- d. Hire a qualified Finance Officer by no later than April 1, 2010, unless the Division grants an extension based on a demonstration of good cause by the City. CWSRF Program disbursements will not be processed after April 1, 2010, unless the City demonstrates compliance with this condition or an extension is granted by the Division;
- e. Submit a comprehensive plan that addresses the Grand Jury Report findings and recommendations, including specific actions taken and proposed (with anticipated completion dates). The plan must be adopted by the City Council and submitted to the Division by January 30, 2010; and
- f. Submit audited financial statements for the next five (5) FYs, FY 2009-2010 through FY 2013-2014. Each FY's audited financial statements shall be provided to the Division by December 30 of each year.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Objective 1.3 to take appropriate enforcement actions and innovative approaches as needed to protect and restore all surface waters.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

ADOPTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM  
PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF WILLIAMS (CITY),  
WASTEWATER TREATMENT PLANT (WWTP) IMPROVEMENT PROJECT (PROJECT),  
CWSRF PROJECT NO. C-06-4049-110

### WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the "*Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*" (Policy) and amended it on March 17, 2009;
2. The State Water Board, on September 15, 2009, adopted the State Fiscal Year (SFY) 2009/2010 CWSRF Program Project Priority List, which included the City's Project (which is also known as the City of Williams Wastewater Treatment Facility Compliance Upgrade and Expansion Project) in Priority Class C;
3. The Division of Financial Assistance (Division) approved the amended Facility Plan for the City's Project on November 10, 2009, and the City accepted the amended Facility Plan Approval on November 10, 2009;
4. An independent credit review completed on April 24, 2009, recommended a maximum financing amount of \$10 million, assuming a 20-year term at a one percent (1%) interest rate. Assuming a 30-year payment period and a zero percent (0%) interest rate staff recommends a maximum financing amount of \$17 million;
5. The City is a small (population less than 20,000 persons), disadvantaged (median household income [MHI] less than 80 percent of the Statewide MHI) community with adopted wastewater rates greater than 1.5 percent of the community's 2008 MHI;
6. The Colusa County Grand Jury produced six (6) findings regarding the operation of the City and its financial management practices as part of the *2008-2009 Final Report* (Grand Jury Report), dated June 29, 2009. Due to the Grand Jury findings, Project funding is not routine, and the Project's PFC must be presented to the State Water Board for consideration;
7. The City adopted an Initial Study/Mitigated Negative Declaration (IS/MND) and a Mitigation Monitoring and Reporting Program, and approved the Project on January 30, 2008;
8. The City filed a Notice of Determination with the Colusa County Clerk on February 8, 2008, and with the Governor's Office of Planning and Research on February 13, 2008;
9. State Water Board staff reviewed and considered the information contained in the IS/MND and applicable documents, and determined that the Project will not have any significant adverse water quality impacts; and
10. Conservation measures to avoid impacts to wetlands and special status species will be included as special conditions under Exhibit D of the CWSRF financing agreement.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$16,918,943 for the City's Project, with a repayment period of 30 years at a zero percent (0%) interest rate. The first repayment shall be due one year after completion of construction. Per Section X(F) of the Policy, if at any time the requested financing amount exceeds the PFC amount by more than fifty percent (50%) or the credit limit, whichever is less, the Project must receive re-approval of the PFC;
2. Conditions the financing agreement, as determined by the City's credit review, with the following items:
  - a. The financing agreement shall be secured with a pledge of net revenues of the user fees, also known as the Sewer Enterprise Fund and the Sewer Impact Fund;
  - b. The City shall establish a reserve fund, equal to one year's debt service, prior to the completion of construction date;
  - c. The City shall fund a Rate Stabilization Fund equal to the first year's payment of \$563,965, from sewer service charges prior to the due date of the first payment;
  - d. The financing agreement shall be limited to a maximum of \$17 million (at zero percent [0%] interest rate with a 30-year term); and
  - e. The City shall establish rates and charges sufficient to generate net revenues equal to at least 1.25 times annual debt service;
3. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by January 30, 2010. In accordance with Section IX(K)(3) of the Policy, the Deputy Director of the Division or designee may approve up to a 120-day extension of the PFC for good cause;
4. Conditions this approval such that the City must prepare and submit a cost analysis, as part of the Approval of Award, comparing the cost to construct Project facilities based on the eligible peak wet weather flow (i.e., 2.11 million gallons per day) to the cost to construct the Project facilities with adequate capacity to accommodate actual peak flows. Based on that analysis, the Division will make a determination as to any ineligible incremental costs;
5. Conditions the financing agreement to require the City to implement a public education program for two years beginning no later than June 1, 2010, since 12.6 percent (12.6%) of the ratepayers protested the rate increase during the Proposition 218 process;
6. Conditions the financing agreement to require the City to implement the measures identified in the Initial Study/Mitigated Negative Declaration to avoid impacts to wetlands, the giant garter snake, and the vernal pool tadpole shrimp. These measures will be included as special conditions in Exhibit D of the City's CWSRF financing agreement;

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7. Conditions the financing agreement to require the City to maintain wastewater rates adequate for proper long-term operations and maintenance over the useful life of the Project (i.e., at least 30 years after the initiation of operations) and CWSRF Program payments. The City must raise wastewater rates if necessary to achieve this goal, and may not lower wastewater rates without Division approval;
8. Conditions the financing agreement to require the City to obtain written approval from the FHA, or appropriate entity, if the financing amount is increased above \$17,029,900; and
9. Conditions the financing agreement to require the City to:
  - a. Submit statements twice a year verifying the coverage ratio is maintained in the payment account for the initial seven (7) years of the financing agreement, at which time the need for this requirement will be revisited;
  - b. Submit monthly construction progress reports;
  - c. Provide copies of the audited fiscal year (FY) 2008-2009 financial statements and the adopted budget plan (with resolution and/or City Council meeting minutes) by December 1, 2009;
  - d. Hire a qualified Finance Officer by no later than April 1, 2010, unless an extension is granted by the Division based on demonstration of good cause by the City. CWSRF Program disbursements will not be processed after April 1, 2010, unless the City demonstrates compliance with this condition or an extension is granted by the Division;
  - e. Submit a comprehensive plan that addresses the Grand Jury Report findings and recommendations, including specific actions taken and proposed (with anticipated completion dates). The plan must be adopted by the City Council and submitted to the Division by January 30, 2010; and
  - f. Submit audited financial statements for the next five (5) FYs, FY 2009-2010 through FY 2013-2014. Each FY's audited financial statements shall be provided to the Division by December 30 of each year.

## 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 December 1, 2009.

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Jeanine Townsend  
Clerk to the Board