

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE  
JULY 7, 2009**

**ITEM 7**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE LINDA COUNTY WATER DISTRICT (DISTRICT), WASTEWATER TREATMENT PLANT (WWTP) EXPANSION PROJECT (PROJECT), CWSRF PROJECT NO. C-06-5098-110

**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 June 4, 2009, the Assistant Deputy Director of the Division of Financial Assistance (Division) issued the FPA for the District's Project. The District agreed to the FPA on June 8, 2009. Division staff found that the District'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 2, 2008, adopted the State Fiscal Year (SFY) 2008/2009 CWSRF Program Project Priority List, which included the District's Project in Priority Class C. The Project is also included in the CWSRF Program Intended Use Plan (IUP) for SFY 2008/2009.

The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted by Congress and signed into law on February 17, 2009, providing approximately \$280 million to the CWSRF Program. ARRA provides a combination of tax and spending measures designed to create jobs, stimulate economic recovery, and invest in technology and infrastructure for long-term economic benefit. On March 17, 2009, the State Water Board adopted [Resolution No. 2009-0027](#), which defines how the State Water Board will implement the CWSRF Program's ARRA allotment.

**PROJECT INFORMATION**

The District's WWTP is located at 909 Myrna Avenue in the unincorporated community of Linda. The District's service area is located south of the Yuba River on the east side of the Feather River, approximately two miles south of Marysville in Yuba County. The assessors parcel number for the WWTP is 13-010-002. The District is within the jurisdiction of the Central Valley Regional Water Quality Control Board (Central Valley Water Board).

The WWTP treats municipal wastewater. The District's existing treatment system consists of the headworks, primary clarification, a trickling filter, secondary clarification, disinfection and dechlorination, and sludge digesters. Treated wastewater is discharged to the District's percolation/evaporation ponds. Solids are handled by anaerobic solids digestion and dewatering in sludge drying beds. The WWTP has an average dry weather flow (ADWF) of approximately 1.25 million gallons per day (MGD) and a current capacity of 1.8 MGD.

The proposed Project involves expanding and upgrading the WWTP to increase capacity and construction of new facilities to provide tertiary treatment of wastewater. The Project site encompasses the existing WWTP on a 15-acre parcel of District property and an additional 22-acre parcel to the north of the existing WWTP purchased in 2003 for expansion. All land is owned by the District. The proposed Project will increase ADWF capacity from 1.8 MGD to 5.0 MGD.

## **ENVIRONMENTAL REVIEW**

The District prepared an Environmental Impact Report (EIR) for the Project. The draft EIR was distributed to the public and circulated through the State Clearinghouse (SCH No. 2006032130) for review from February 9, 2007, through March 26, 2007. The District received comment letters from four state agencies, including:

- California Department of Transportation (CalTrans), Division of Aeronautics commented on airport-related noise and safety impacts, and regional airport land use planning concerns. CalTrans determined that the southern portion of the expansion area was located north of the extended centerline for the Yuba County Airport runway and may be subject to restricted land use practices identified by the Federal Aviation Administration. CalTrans also recommended that the District coordinate with Yuba County Airport staff to monitor wildlife activity and to ensure compatibility with future and existing airport operations.
- California Department of Water Resources (DWR) commented on encroachment into the State Adopted Plan of Flood Control, and recommended that the District review designated floodway maps. DWR stated that if the Project were to encroach within an adopted flood control plan, then the District would need to obtain an encroachment permit from the Reclamation Board prior to initiating any construction activities.
- State Water Board, Division of Financial Assistance (Division) provided information on the CWSRF Program, requested revisions to figures in the EIR, and recommended that the District adopt a Statement of Overriding Considerations (SOC) for significant Project impacts. The State Water Board's Division staff also requested clarification on the Project location and revisions of mitigation measures.
- California State Lands Commission (CSLC) commented on State-owned sovereign land under the jurisdiction of the CSLC, and requested that the District submit an application for an amendment to the District's existing 49-year Public Agency Permit, which allows sewage treatment plant facilities to be located within the historic bed of the Feather River. The CSLC requested information on the capacity for stormwater inflows in comparison to the rate of the WWTP process, and the location and distance for dewatered solids.

The District responded to all comments received and made revisions to the EIR, as applicable. The District certified the EIR, adopted a Mitigation Monitoring and Reporting Program and an SOC, and approved the Project at a Board of Director's meeting on September 10, 2007. The District filed a Notice of Determination (NOD) with the Yuba County Clerk on September 12, 2007, and the Governor's Office of Planning and Research (OPR) on September 13, 2007. State Water Board staff reviewed and considered the EIR and associated environmental documents, and determined that the Project will not result in any significant adverse water quality impacts.

In the impact analysis of the EIR, significant and unavoidable Project impacts were identified in the following areas:

- Land use and planning, agricultural, and mineral resources, population and housing, and recreation: A significant unavoidable impact will occur through the permanent conversion of approximately 21.87 acres of prime and unique farmland to a public use facility, and no feasible measures exist to avoid or reduce this impact.
- Noise: Construction of the Project will generate substantial temporary increases in ambient noise levels for residents adjacent to the WWTP, and measures were identified that will reduce, but not fully mitigate this impact. Thus, this impact will remain significant and unavoidable.
- Biological resources: Construction of the Project, in combination with other development in the region, could contribute to the incremental conversion of foraging habitat for special-status species to more urban uses, and thus, limit the availability and accessibility of remaining habitats to regional wildlife. Implementation of measures will reduce Project-specific impacts to the extent feasible; however, these impacts will remain as significant and unavoidable cumulative impacts.

The District adopted a SOC to substantiate its decision to approve the Project despite the following: 1) significant and unavoidable permanent impacts to: a) land use and planning, b) agricultural and mineral resources, c) population and housing, and d) recreation; 2) temporary impacts to noise; and 3) cumulative impacts to biological resources. These impacts could not be avoided through Project redesign or reduced by implementing feasible mitigation measures or by selecting another environmentally preferable Project alternative.

State Water Board staff recommends finding that the following specific economic, social, technological, and environmental benefits of the Project outweigh these unavoidable adverse environmental impacts:

- The Project will allow the District to comply with and implement the requirements of its National Pollutant Discharge Elimination System (NPDES) permit.
- The Project will improve the quality of the treated effluent and water quality conditions in the Feather River.
- The Project will provide the District an opportunity to produce and utilize recycled water in the future, and to advance important water conservation goals and objectives.

- The District is required to maintain adequate wastewater treatment and disposal capacity to meet the needs of existing and projected growth within the District's service area. The Project will provide expanded capacity in accordance with these requirements and policies.
- The Project will support economic and housing development in the area in accordance with the goals and policies of the County of Yuba's economic and housing development and other land uses.
- New development that is facilitated by the Project will generate new employment-generating land uses and jobs in the unincorporated area called Linda, provide economic growth in the community, and increase the District's revenue from connection and service charges.

On February 5, 2009, State Water Board staff distributed the EIR to the following federally designated agencies: the U.S. Environmental Protection Agency (U.S. EPA); the U.S. Army Corps of Engineers; the Federal Emergency Management Agency; and the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS). The federal review period concluded on March 27, 2009, and no comments were received. Expanding the WWTP into the expansion area will result in a permanent loss of approximately 19.29 acres of prime farmland and approximately 2.58 acres of unique farmland. The permanent conversion of approximately 21.87 acres of prime and unique farmland to a public use facility will be a significant impact and feasible measures do not exist to avoid or reduce this impact. State Water Board staff distributed the EIR to the NRCS to provide them with an opportunity to review and comment. No comments were received from the NRCS. Therefore, State Water Board staff determined there was sufficient consultation under the Farmland Protection Policy Act, and no further action is needed.

On February 5, 2009, State Water Board staff sent to the U.S. Fish and Wildlife Services (USFWS) a "Request for Endangered Species Act, Section 7 Concurrence" and a finding of "no effect" for plant and animal special status species. No comments were received from the USFWS; however, USFWS concurrence is not required based on the "no effect" finding.

The State Water Board's Cultural Resources Officer (CRO) sent a request for concurrence on Section 106 compliance and a finding of "no historic properties affected" to the State Historic Preservation Office (SHPO) on February 13, 2009. The SHPO concurred with the CRO's finding on February 25, 2009. There are no special conditions for this Project.

In addition, State Water Board staff compared the District'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 comment. No comments were received from U.S. EPA on staff's analysis of air quality impacts. State Water Board staff determined that federal consultation has been sufficient and that no issues were raised that would have required further consultation with federal agencies.

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 District's ability to enter a CWSRF financing agreement for the amount requested. The credit review provided recommendations regarding the financial agreement terms, maximum CWSRF financing amount, financial capacity, and requirements for the financing agreement.

The District's estimated 2008 median household income (MHI) is \$29,380, which is approximately 50.3 percent of the State of California MHI (\$58,414). The District qualifies as a disadvantaged community because the community's MHI is less than 80 percent of the State of California's MHI. The District serves the area around the unincorporated community of Linda in Yuba County. The population of the Linda Census Designated Place is estimated to be 19,640 persons in 2008, of which the District serves an estimated population of 14,000 persons, which qualifies the District as a small (i.e., population less than 20,000 persons) community.

The District completed Proposition 218 noticing for past rate increases. The current wastewater service charge is \$18.50/month per dwelling unit (0.76 percent of the District's 2008 MHI). As a disadvantaged community, the District is eligible for principal forgiveness. In accordance with State Water Board Resolution No. 2009-0027, the District is currently eligible for a maximum principal forgiveness amount of \$2 million, as the District's wastewater rates are less than 1.5 percent of the community's MHI. However, the District plans to increase its wastewater rates and plans to hold a Proposition 218 hearing on July 13, 2009. The projected residential monthly wastewater service charge per dwelling unit is \$36.80, effective July 1, 2011, (1.50 percent of the District's 2008 MHI).

If the proposed rate increase passes, and adopted wastewater rates are at least 1.5 percent of the community's 2008 MHI, as a small, disadvantaged community, the District will qualify for Extended Term Financing (ETF) (i.e., a 30-year financing term). With an estimated Project cost of \$54.304 million, if the District adopts wastewater rates of at least 1.5 percent of the community's 2008 MHI prior to the start of CWSRF financing repayment, the District may receive a maximum of \$10 million in principal forgiveness. The remaining funds would be financed with a 30-year term at a one percent (1%) interest rate. A 30-year, \$44.304 million financing at one percent (1%) would require annual debt service payments of \$1,716,696. The projected net revenues of the Wastewater Enterprise Fund will provide debt service coverage of at least 1.19 times all debt. The District currently has no outstanding long-term debt. The credit review recommended a maximum financing amount of \$44.304 million.

The final principal forgiveness amount and interest rate may be modified based on the Approval of Award (AOA) determination and Proposition 218 outcome, and the financing agreement will be updated accordingly.

## CWSRF PROGRAM FISCAL IMPACT

As of May 14, 2009	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12
Beginning Balance:	\$307,959,193	\$393,048,089	\$169,478,346	\$110,502,631
Estimated Repayments	\$202,042,509	\$217,931,355	\$227,931,355	\$237,931,355
Debt Service on Revenue Bonds	(\$31,893,104)	(\$31,758,441)	(\$31,456,429)	(\$30,228,204)
Estimated Capitalization Grants	\$46,965,399	\$46,720,999	\$0	\$0
ARRA Grant	\$269,074,368			
State G.O. Bond proceeds (less state admin. match)	\$13,414,123	\$0	\$0	\$0
Local Match Credits	\$22,851,524	\$6,748,551	\$5,083,435	\$5,083,435
Est. SMIF Interest:	\$10,674,552	\$10,000,000	\$10,000,000	\$8,000,000
Estimated Disbursements	(\$437,333,734)	(\$250,190,277)	(\$160,003,961)	(\$52,860,956)
<b>Subtotal</b>	<b>\$403,754,830</b>	<b>\$392,500,275</b>	<b>\$221,032,747</b>	<b>\$278,428,261</b>
<b>Proposed Projects Estimated Disbursements</b>				
City of Williams #4049-110 (05/13/2009)		(\$16,234,000)	(\$4,000,000)	
City of Brawley #4502-110 (04/20/2009)	(\$1,059,000)	(\$12,708,000)	(\$11,633,000)	
Kelseyville CWWDD #3 (Upgrade Treatment System) #4593-110 (04/09/2009)		(\$2,719,007)	(\$521,861)	
City of Rio Dell #4922-110 (05/13/2009)		(\$1,600,000)	(\$400,000)	
Garberville Sanitary District #4926-110 (05/13/2009)		(\$2,400,000)	(\$600,000)	
City of Chico #4997-120 (05/05/2009)		(\$5,422,120)		
East Bay Municipal Utility District (Rare Water) #5020-110 (02/25/2009)		(\$35,226,616)		
City of Live Oak #5042-110 (05/07/2009)		(\$7,000,000)	(\$6,000,000)	(\$3,000,000)
City of Wasco #5063-110 (05/13/2009)		(\$1,190,000)	(\$711,327)	
Linda County Water District #5098-110 (05/14/2009)		(\$4,177,229)	(\$25,063,380)	(\$25,063,391)
Eastern Municipal Water District #5100-110 (05/05/2009)		(\$14,098,119)	(\$21,698,067)	(\$2,566,704)
City of Hughson #5139-110 (03/17/2009)	(\$3,000,000)	(\$20,000,000)		
City of Kerman #5150-110 (02/04/2009)		(\$4,000,000)	(\$2,900,000)	(\$921,898)
Beaumont-Cherry Valley WD #5157-110 (02/25/2009)		(\$15,000,000)	(\$2,500,000)	
Inland Empire Utilities Agency #5176-110 (02/10/2009)	(\$5,676,000)	(\$17,013,999)	(\$11,000,001)	
Delta Diablo Sanitation District #5177-110 (02/25/2009)		(\$9,359,883)	(\$389,995)	
Eastern Municipal Water District (Moreno Valley) #5311-110 (03/17/2009)		(\$18,000,000)	(\$18,000,000)	(\$18,000,000)
Inland Empire Utilities Agency (Victoria & San Sevaime) #5332-110 (03/17/2009)	(\$900,000)	(\$600,000)		
Santa Cruz County Sanitation District (Aptos Esplanade) #6906-110 (05/13/2009)		(\$488,205)		
City of Los Angeles (Santa Monica Bay) #6907-110 (05/13/2009)		(\$5,000,000)		
Santa Cruz County Sanitation District (Aptos Beach) #6909-110 (05/13/2009)		(\$168,750)		
Santa Cruz County Sanitation District (New Brighton) #6910-110 (05/13/2009)		(\$1,200,000)	(\$532,877)	
Marin Conservation Corps #6915-110 (05/13/2009)		(\$380,000)		

As of May 14, 2009	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12
CA Land Stewardship Institute #6916-110 (05/13/2009)		(\$141,637)	(\$16,250)	
City of Chico #6918-110 (05/13/2009)		(\$523,515)		
Community Alliance w/Family Farmers Foundation #6919-110 (05/13/2009)		(\$493,483)		
San Mateo County Resource Conservation District #6920-110 (05/13/2009)		(\$187,174)		
Western Shasta Resource Conservation District #6923-110 (05/13/2009)		(\$97,038)		
County of Napa #6924-110 (05/13/2009)		(\$930,000)	(\$51,037)	
Central Coast Agricultural Water Quality Coalition #6927-110 (05/07/2009)		(\$500,000)		
Cachuma Resource Conservation District #6928-110 (05/07/2009)		(\$150,000)		
County of Santa Cruz #6930-110 (05/07/2009)		(\$290,000)	(\$18,026)	
County of Santa Cruz #6931-110 (05/07/2009)		(\$119,479)		
County of Santa Cruz #6932-110 (05/07/2009)		(\$1,830,941)		
Central Coast Vineyard Team #6933-110 (05/07/2009)		(\$150,000)		
The Foundation of Morro Bay #6934-110 (05/07/2009)		(\$240,000)	(\$20,000)	
Gold Ridge Resource Conservation District #6935-110 (05/05/2009)		(\$160,000)	(\$31,355)	
Gold Ridge Resource Conservation District #6936-110 (05/05/2009)		(\$412,150)	(\$196,437)	
Humboldt County Resource Conservation District #6942-110 (05/05/2009)		(\$110,000)	(\$70,000)	
Mendocino County Department of Transportation #6944-110 (05/05/2009)		(\$149,450)		
City of Santa Rosa #6945-110 (05/05/2009)		(\$380,000)		
Port of San Francisco (Pier 45) #6947-110 (05/13/2009)		(\$1,800,000)		
Truckee River Watershed Council #6950-110 (05/13/2009)		(\$172,000)	(\$151,335)	
City of Long Beach #6951-110 (05/13/2009)		(\$2,200,000)	(\$1,200,000)	(\$134,013)
Western Riverside County AC Coalition #6952-110 (05/12/2009)	(\$52,741)	(\$62,415)		
Western Municipal Water District (Chino) #6954-110 (05/12/2009)		(\$4,200,000)	(\$286,284)	
Inland Empire Utilities Agency (Magnolia Channel) #6956-110 (05/12/2009)		(\$600,000)	(\$173,045)	
City of Huntington Beach #6958-110 (05/12/2009)		(\$3,927,775)	(\$1,206,225)	
Inland Empire Utilities Agency (Greater Prado Basin), #6959-110 (05/12/2009)		(\$328,012)	(\$3,000)	
Inland Empire Utilities Agency (Chino Ckeek) #6960-110 (05/12/2009)		(\$750,000)	(\$722,263)	
Santa Ana Watershed Project Authority #6961-110 (05/12/2009)		(\$60,664)		
City of Hermosa Beach #6962-110 (05/13/2009)		(\$670,000)	(\$280,850)	
City of Long Beach (Los Angeles River Trash Nets) #6963-110 (05/13/2009)		(\$451,908)		
City of Los Angeles Department of Public Works #6964-110 (05/13/2009)		(\$2,000,000)		
City of Ojai #6965-110 (05/13/2009)		(\$200,000)		

As of May 14, 2009	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12
Friends of the Santa Clara River #6966-110 (05/13/2009)	(\$19,000)	(\$76,000)	(\$38,000)	
Ventura County Watershed Protection District #6968-110 (05/13/2009)		(\$1,147,449)		
City of Malibu #6969-110 (05/13/2009)		(\$808,556)		
City of Redondo Beach #6970-110 (05/13/2009)		(\$202,000)		
City of Long Beach #6971-110 (05/13/2009)		(\$523,418)	(\$60,501)	
City of Long Beach (Los Angeles River Trash SD) #6972-110 (05/13/2009)		(\$490,937)	(\$55,000)	
Trinidad Rancheria #6973-110 (05/13/2009)		(\$1,500,000)		
	<b>\$393,048,089</b>	<b>\$169,478,346</b>	<b>\$110,502,631</b>	<b>\$228,742,255</b>

Notes:

- Estimated Repayments include repayments from existing and future Financing Agreements.
- Estimated disbursements include disbursements remaining on executed Financing Agreements and planned disbursements on projects with PFCs. Local Match credits are the anticipated funds that will be contributed for local match Financing Agreements included in "Estimated Disbursements."

## REGIONAL BOARD IMPACT

The District's WWTP operates under Waste Discharge Requirements (WDR) issued under Central Valley Water Board Order [No. R5-2008-0187](#) (Amending [R5-2006-0096](#); NPDES Permit No. CA0079651).

## POLICY ISSUE

Should the State Water Board:

1. Adopt a SOC for the District's Project?
2. Condition the financing agreement, as determined by the District's credit review, with the following items:
  - a. A reserve fund, equal to one year's debt service, must be established by the District prior to the completion of construction date; and
  - b. The financing amount shall be limited to a maximum of \$44.304 million unless information supporting the credit review changes?
3. Approve a CWSRF PFC of \$54.304 million for the District's Project? Of this amount, per State Water Board Resolution No. 2009-0027, \$2 million to \$10 million may be forgiven. If the District adopts wastewater rates, in accordance with Proposition 218, that raise rates greater than or equal to 1.5 percent of the community's 2008 MHI prior to July 31, 2009, ARRA principal forgiveness is set at a maximum of \$10 million. If wastewater rates greater than or equal to 1.5 percent of the community's 2008 MHI are not adopted prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$2 million. The financing portion of the financing agreement will be at a one percent (1%) interest rate with a 30-year repayment period.

In accordance with the Policy, the repayment period will be 20 years if the District does not complete a successful Proposition 218-compliant process to increase wastewater rates to at least 1.5 percent of the community's 2008 MHI prior to July 31, 2009. The first repayment shall be due one year after completion of construction.

4. Condition this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by August 17, 2009, in accordance with Section IX (K) of the Policy? Authorize Division staff the discretion to approve up to a 120-day extension for good cause?
5. Condition this approval such that a financing agreement may be executed, but funds for construction will not be disbursed until the District approves the wastewater rates subject to Proposition 218?
6. Condition the financing agreement to require the District to implement a public education program for two years following the adoption of the new wastewater rates, if five percent (5%) or more of the ratepayers protest the rate increase during the Proposition 218 process?
7. Condition this approval such that the District must meet the following deadlines to maintain ARRA eligibility:
  - a. A financing agreement must be executed or be executable by August 17, 2009;
  - b. The Division must receive a completed AOA request by October 15, 2009; and
  - c. The Division must receive a copy of an executed construction contract by November 15, 2009?
8. Condition this approval such that the District shall certify that it meets all requirements of the ARRA including, but not limited to, the following:
  - a. Section 1512 – Reporting Requirements;
  - b. Section 1605 – American Iron, Steel, and Manufactured Goods; and
  - c. Section 1606 – Federal Prevailing Wage?
9. Condition this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by ARRA, including, but not limited to, provisions related to principal forgiveness? The District may still be eligible for CWSRF funding, at the standard financing rate, if CWSRF funding is available.
10. Condition this approval such that the District shall submit the following items prior to execution of a financing agreement:
  - a. A letter from the authorized representative confirming that the District has no outstanding wastewater debts;
  - b. A dedicated source of revenue resolution;
  - c. A general plan compliance certification;
  - d. A tax questionnaire and reimbursement resolution; and
  - e. A legal opinion on access to and ownership of land for the Project?
11. Condition this approval such that if additional funding is needed for the Project (i.e., the amount of financing that must be repaid exceeds \$44.304 million or the repayment period is 20 years), prior to execution of the financing agreement the District will be required to submit evidence of additional funding for the remaining balance of the Project and/or the District's ability to repay the financing over 20 years?

## STAFF RECOMMENDATION

The State Water Board should:

1. Adopt a SOC for the District's Project;
2. Condition the financing agreement, as determined by the District's credit review, with the following items:
  - a. A reserve fund, equal to one year's debt service, must be established by the District prior to the completion of construction date; and
  - b. The financing amount shall be limited to a maximum of \$44.304 million unless information supporting the credit review changes;
3. Approve a CWSRF PFC of \$54.304 million for the District's Project. Of this amount, per State Water Board Resolution No. 2009-0027, \$2 million to \$10 million may be forgiven. If the District adopts wastewater rates, in accordance with Proposition 218, that raise rates greater than or equal to 1.5 percent of the community's 2008 MHI prior to July 31, 2009, ARRA principal forgiveness is set at a maximum of \$10 million. If wastewater rates greater than or equal to 1.5 percent of the community's 2008 MHI are not adopted prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$2 million. The financing portion of the financing agreement will be at a one percent (1%) interest rate with a 30-year repayment period. In accordance with the Policy, the repayment period will be 20 years if the District does not complete a successful Proposition 218-compliant process to increase wastewater rates to at least 1.5 percent of the community's 2008 MHI prior to July 31, 2009. The first repayment shall be due one year after completion of construction;
4. Condition this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by August 17, 2009, in accordance with Section IX (K) of the Policy. Authorize Division staff the discretion to approve up to a 120-day extension for good cause;
5. Condition this approval such that a financing agreement may be executed, but funds for construction will not be disbursed until the District approves the wastewater rates subject to Proposition 218;
6. Condition the financing agreement to require the District to implement a public education program for two years following the adoption of the new wastewater rates, if five percent (5%) or more of the ratepayers protest the rate increase during the Proposition 218 process;
7. Condition this approval such that the District must meet the following deadlines to maintain ARRA eligibility:
  - a. A financing agreement must be executed or be executable by August 17, 2009;
  - b. The Division must receive a completed AOA request by October 15, 2009; and
  - c. The Division must receive a copy of an executed construction contract by November 15, 2009;

8. Condition this approval such that the District shall certify that it meets all requirements of the ARRA including, but not limited to, the following:
  - a. Section 1512 – Reporting Requirements;
  - b. Section 1605 – American Iron, Steel, and Manufactured Goods; and
  - c. Section 1606 – Federal Prevailing Wage;
9. Condition this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by ARRA, including, but not limited to, provisions related to principal forgiveness. The District may still be eligible for CWSRF funding, at the standard rate, if CWSRF funding is available;
10. Condition this approval such that the District shall submit the following items prior to execution of a financing agreement:
  - a. A letter from the authorized representative confirming that the District has no outstanding wastewater debts;
  - b. A dedicated source of revenue resolution;
  - c. A general plan compliance certification;
  - d. A tax questionnaire and reimbursement resolution;
  - e. A legal opinion on access to and ownership of land for the Project; and
11. Condition this approval such that if additional funding is needed for the Project (i.e., the amount of financing that must be repaid exceeds \$44.304 million or the repayment period is 20 years), prior to execution of the financing agreement the District will be required to submit evidence of additional funding for the remaining balance of the Project and/or the District's ability to repay the financing over 20 years.

State Water Board action on this item will assist the Water Boards in reaching Goals 1 and 2 of the *Strategic Plan Update: 2008-2012* to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030 (Goal 1), and to improve and protect groundwater quality in high-use basins by 2030 (Goal 2).

# DRAFT

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

ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE LINDA COUNTY WATER DISTRICT (DISTRICT), WASTEWATER TREATMENT PLANT (WWTP) EXPANSION PROJECT (PROJECT), CWSRF PROJECT NO. C-06-5098-110

### 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 American Recovery and Reinvestment Act of 2009 (ARRA) was enacted by Congress and signed into law on February 17, 2009, providing approximately \$280 million to the CWSRF Program for local assistance that must be committed quickly to eligible projects;
3. In accordance with [Resolution No. 2009-0027](#), adopted by the State Water Board on March 17, 2009, the State Water Board will allocate up to 65 percent of its ARRA funding to principal forgiveness for wastewater infrastructure projects for disadvantaged communities and to restart stopped bond projects. The remaining ARRA funds will be used to provide zero or one percent fixed-rate financing;
4. The State Water Board, in September 2008, adopted the State Fiscal Year 2008/2009 CWSRF Program Project Priority List, which includes the District's Project in Priority Class C;
5. The Division of Financial Assistance (Division) approved the Facility Plan for the District's Project on June 4, 2009, and the District accepted the Facility Plan Approval on June 8, 2009;
6. An independent credit review was completed on March 31, 2009, recommending a maximum credit limit of \$44.304 million for the District's Project;
7. The District is a small (population less than 20,000 persons), disadvantaged (median household income [MHI] less than 80 percent of the Statewide MHI) community with current wastewater rates less than 1.5 percent of the community's MHI;
8. In accordance with Proposition 218, the District's Board of Directors will hold a public hearing on July 13, 2009, to consider adoption of a proposed ordinance to increase the District's wastewater rates to 1.5 percent of the community's 2008 MHI over three years, which, if successful, will make the District eligible for a maximum of \$10 million in principal forgiveness and qualify the District for extended term financing (ETF);
9. The District certified an Environmental Impact Report (EIR) (State Clearinghouse No. 2006032130), adopted a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations (SOC), and approved the Project on September 10, 2007;

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10. The District filed a Notice of Determination with the Yuba County Clerk on September 12, 2007, and the Governor's Office of Planning and Research on September 13, 2007;
11. The District adopted a SOC to substantiate its decision to approve the Project despite the following: 1) significant and unavoidable permanent impacts to: a) land use and planning, b) agricultural and mineral resources, c) population and housing, and d) recreation; 2) temporary impacts to noise; and 3) cumulative impacts to biological resources;
12. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh these unavoidable adverse environmental impacts:
  - a. The Project will allow the District to comply with and implement the requirements of its National Pollutant Discharge Elimination System permit;
  - b. The Project will improve the quality of the treated effluent and water quality conditions in the Feather River;
  - c. The Project will provide the District an opportunity to produce and utilize recycled water in the future, and to advance important water conservation goals and objectives;
  - d. The District is required to maintain adequate wastewater treatment and disposal capacity to meet the needs of existing and projected growth within the District's service area. The Project will provide expanded capacity in accordance with these requirements and policies;
  - e. The Project will support economic and housing development in the area in accordance with the goals and policies of the County of Yuba's economic and housing development and other land uses;
  - f. New development that is facilitated by the Project will generate new employment-generating land uses and jobs in Linda, provide economic growth in the community, and increase the District's revenue from connection and service charges; and
13. State Water Board staff reviewed and considered the EIR and associated environmental documents, and determined that the Project will not result in any significant adverse water quality impacts.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the above SOC for the District's Project;
2. Conditions the financing agreement, as determined by the District's credit review, with the following items:
  - a. A reserve fund, equal to one year's debt service, must be established by the District prior to the completion of construction date; and
  - b. The financing agreement shall be limited to a maximum of \$44.304 million unless information supporting the credit review changes;

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3. Approves a CWSRF PFC of \$54.304 million for the District's Project, comprised of \$2 million to \$10 million in ARRA principal forgiveness per State Water Board Resolution No. 2009-0027 and the balance in financing. If the District adopts wastewater rates, in accordance with Proposition 218, that raise rates greater than or equal to 1.5 percent of the community's 2008 MHI prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$10 million, with a 30-year repayment period. If wastewater rates greater than or equal to 1.5 percent of the community's 2008 MHI are not adopted prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$2 million, and the financing repayment period shall be 20 years. The financing agreement will be at a one percent (1%) interest rate. The first repayment shall be due one year after completion of construction;
4. Conditions this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by August 17, 2009, in accordance with Section IX (K) of the Policy. Division staff has the discretion to approve up to a 120-day extension for good cause;
5. Conditions this approval such that a financing agreement may be executed, but funds for construction will not be disbursed until the District approves the wastewater rates subject to Proposition 218;
6. Conditions the financing agreement to require the District to implement a public education program for two years following the adoption of the new wastewater rates, if five percent (5%) or more of the ratepayers protest the rate increase during the Proposition 218 process;
7. Conditions this approval such that the District must meet the following deadlines to maintain ARRA eligibility:
  - a. A financing agreement must be executed or be executable by August 17, 2009;
  - b. The Division must receive a completed Approval of Award request by October 15, 2009; and
  - c. The Division must receive a copy of an executed construction contract by November 15, 2009;
8. Conditions this approval such that the District shall certify that it meets all requirements of the ARRA including, but not limited to, the following:
  - a. Section 1512 – Reporting Requirements;
  - b. Section 1605 – American Iron, Steel, and Manufactured Goods; and
  - c. Section 1606 – Federal Prevailing Wage;
9. Conditions this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by ARRA, including, but not limited to, provisions related to principal forgiveness. The District may still be eligible for CWSRF funding, at the standard rate, if CWSRF funding is available;
10. Conditions this approval such that the District shall submit the following items prior to execution of a financing agreement:
  - a. A letter from the authorized representative confirming that the District has no outstanding wastewater debts;
  - b. A dedicated source of revenue resolution;

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- c. A general plan compliance certification;
  - d. A tax questionnaire and reimbursement resolution;
  - e. A legal opinion on access to and ownership of land for the Project;
  - f. A corrected authorized representative resolution; and
11. Conditions this approval such that if additional funding is needed for the Project (i.e., the amount of financing that must be repaid exceeds \$44.304 million or the repayment period is 20 years), prior to execution of the financing agreement the District will be required to submit evidence of additional funding for the remaining balance of the Project and/or the District's ability to repay the financing over 20 years.

### **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 July 7, 2009.

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Jeanine Townsend  
Clerk to the Board