STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING - DIVISION OF FINANCIAL ASSISTANCE
JUNE 16, 2009

ITEM 7

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS (SOC), AND EXECUTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF CHICO (CITY), WATER POLLUTION CONTROL PLANT (WPCP) OUTFALL PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4997-120

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 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 May 21, 2009, 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 May 22, 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 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 Priority List, which included the City's Project in Priority Class C. The Project, which is also known as the Chico WPCP Expansion (Phase 2) 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 City is located in Butte County. The City's WPCP is located at 4827 Chico River Road, which is approximately four miles to the southwest of downtown Chico. The proposed pipeline improvements will occur on agricultural land approximately 7,000 feet to the west of the current WPCP.

The WPCP provides secondary level wastewater treatment and disposal for the City. The influent to the WPCP consists primarily of residential and commercial wastewater discharges with few industrial sources. The WPCP expansion is currently under construction, as part of CWSRF Program Project No. C-06-4997-110 to increase its treatment capacity to 12 million gallons per day (MGD) of dry weather flow and 30 MGD of peak wet weather flow (PWWF) (Phase 1).

The existing discharge outfall has a hydraulic capacity equivalent to an average day average month (ADAM) flow rate of 11.6 MGD. Based on flow projections prepared as part of the Facility Plan Update and updated with the most recent implementation schedule for the Joint Power Financing Authority's Nitrate Action Plan Projects, the WPCP will not exceed an ADAM flow of 9 MGD until 2010, and will not exceed an ADAM flow of 11.6 MGD until 2017. The new outfall is planned to be completed by December 31, 2009, and will have a capacity of 15 MGD of dry weather flow and 37.5 MGD of PWWF to allow for future expansion of the WPCP.

The purpose of the Project is to construct a new outfall pipeline and diffuser (Phase 2) to replace the existing pipeline and diffuser. The existing outfall diffuser is designed to handle 12 MGD of dry weather flow and 30 MGD of PWWF. The existing WPCP is under construction to increase its treatment capacity to handle 12 MGD of dry weather flow and 30 MGD of PWWF. The new outfall pipeline and diffuser is designed to handle15 MGD of dry weather flow and 37.5 MGD of PWWF, to match the designed PWWF of the WPCP at future build out (37.5 MGD).

ENVIRONMENTAL REVIEW

The City prepared an Environmental Impact Report (EIR) for a larger project (Phases 1 and 2) that included the proposed Project (Phase 2). The EIR was distributed for public review and circulated through the State Clearinghouse (SCH No. 2004022111) from January 31, 2005, through March 16, 2005. During the review period, the City received the following written comments:

- State Clearinghouse notified the City of the closure of the comment period
- Butte County Air Quality Management District questioned air quality mitigation measures
- Mechoopda Indian Tribe had concerns about potential impacts to cultural resources
- Butte County Environmental Health, Chico Office, acknowledged that its comments on the Notice of Preparation were integrated into the EIR
- Sacramento River Preservation Trust requested more information and detailed discussion of effluent reuse
- M&T Ranch recommended other options
- Carolyn Smith emphasized odor reduction as a priority

In addition, comments were received during a July 23, 2005, public hearing and included capacity, dewatering, odor reduction, timing, and preference of other options, as well as others.

The City responded in writing to all comments. On October 18, 2005, the City certified the EIR, approved the larger project, and adopted a Mitigation and Monitoring Plan and a SOC for the larger project, which included the proposed Phase 2 Project. The City filed a Notice of Determination (NOD) with the Governor's Office of Planning and Research (OPR) on October 20, 2005, and with the Butte County Clerk on October 24, 2005.

The following Project impacts will remain significant and unavoidable: (1) cumulative impacts on the Sacramento River from mercury; and (2) growth-inducement resulting from the expansion of the WPCP, including the outfall. Per the EIR, the WPCP will not be able to remove all the mercury from the City's waste stream. Although the concentration of mercury is low and the likelihood of distant transport also is low, the potential for incremental increase in mercury in the Delta is considered a significant impact. The City adopted an SOC to substantiate its decision to approve the Project despite these impacts.

The City found that, despite the cumulative impact to the Sacramento River from mercury and despite growth inducement in the City, other considerations justified proceeding with the Project. The Project benefits outweighed the potentially unavoidable significant environmental effects associated with the Project and these potentially unavoidable adverse impacts are an acceptable consequence of the Project because of the benefits it will produce.

State Water Board staff reviewed and considered the EIR and all applicable environmental documents, and determined that the Project will not result in any additional significant adverse water quality impacts. State Water Board staff concurred that the Project will result in significant unavoidable impacts to the Sacramento River from mercury and from growth inducement in the City. Staff also agreed with the City's determination that fully mitigating these Project impacts is infeasible. State Water Board staff determined that the specific economic, social, technological, and environmental benefits of the Project outweigh these unavoidable adverse environmental impacts:

a. The relocation of the outfall will provide for continued, reliable sewer service from the WPCP by preventing silt and gravel from blocking the outfall.
b. Expansion of the WPCP, and thus the outfall, will avoid further nitrate contamination of groundwater caused by existing septic systems.
c. The Project will enable the City to continue to meet its National Discharge Elimination System (NPDES) permit requirements for discharge of effluent into the Sacramento River.
d. Approval of the Project will allow the City to implement its General Plan and provide for anticipated growth, including the provision of housing.

For the Phase 1 project, the State Water Board previously adopted on December 4, 2007, its own SOC for unavoidable adverse project impacts to the Sacramento River from mercury and to growth inducement in the City resulting from the expansion of the pipeline and other components of the WPCP (Resolution No. 2007-0065).

In addition to the California Environmental Quality Act review, State Water Board staff applied a Tier I review. On June 6, 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 (USACE); U.S. Fish and Wildlife Service (USFWS); U.S. Department of Agriculture, Natural Resources Conservation Service; National Oceanic and Atmospheric Administration Fisheries-National Marine Fisheries Service (NMFS) and the Federal Emergency Management Agency. USACE initiated formal consultation with NMFS for the Project, which has the potential to impact special status fish species. The federal review period concluded on July 27, 2006. Final concurrence and a Biological Opinion (BO) were received from the USFWS on October 1, 2006. Final concurrence from NMFS and a BO was received by USACE on April 25, 2008.

State Water Board staff determined that the Project was likely to adversely affect federally listed species. State Water Board staff received concurrence and a BO through formal consultation with USFWS. The State Water Board also received concurrence and a BO through USACE from NMFS.

State Water Board staff found that the Project may adversely affect the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), a federally threatened species. Staff also found the Project is not likely to adversely affect the federally threatened giant garter snake (*Thamnophis gigas)*, the federally threatened bald eagle (*Haliaeetus leucocephalus*), and the federal candidate species western yellow-billed cuckoo (*Coccyzus americanus*).

On June 6, 2006, State Water Board staff sent a letter to USFWS requesting informal concurrence pursuant to Section 7 of the federal Endangered Species Act for the Project. On September 19, 2006, State Water Board staff sent a letter to U.S. EPA revising its original Project findings to “likely to adversely affect” giant garter snake and “not likely to adversely affect” valley elderberry longhorn beetle (VELB). In this letter State Water Board staff also requested U.S. EPA initiate formal consultation with USFWS for the Project. On October 1, 2006, prior to U.S. EPA requesting formal consultation, USFWS responded in writing and issued a BO. USFWS found that the proposed Project will: (1) adversely affect the giant garter snake, and (2) not likely adversely affect the VELB and the bald eagle. The USFWS BO covered Phases 1 and 2.

USFWS determined that the component of the proposed Project that could adversely affect the giant garter snake is the construction of the junction box at Angel Slough. Construction of the junction box would permanently destroy 0.04 acre of potential giant garter snake habitat. Nonetheless, critical habitat had not been proposed for the giant garter snake; therefore, none will be adversely modified or destroyed. USFWS’ BO indicated that the Project, as proposed, was not likely to jeopardize the continued existence of the giant garter snake.

USFWS sent a letter on November 15, 2006, to USACE stating that formal consultation was completed with the State Water Board and U.S. EPA. U.S. EPA concurred through email on December 7, 2006, with USFWS’ BO. On May 9, 2008, USFWS sent an email with revised information for Conservation Measures 1, 3, and 7.

State Water Board staff initiated informal consultation with NMFS on June 6, 2006, stating that the proposed Project was "not likely to adversely affect federally listed species." USACE also initiated formal consultation with NMFS on October 12, 2006. NMFS sent a letter to the State Water Board on November 7, 2006, advising the State Water Board that U.S. EPA needs to send notification to NMFS of the State Water Board authority for informal consultation plus provide project-specific information indicating that there will be adverse effects; therefore, informal consultation needed to be initiated by a federal agency. Since USACE had earlier initiated formal consultation, no action was required by U.S. EPA. On April 25, 2008, NMFS sent its BO to USACE. The measures, terms, and conditions from the two BOs (USFWS and NMFS) will be included as special conditions in Exhibit D of the CWSRF financing agreement.

The State Water Board's Cultural Resources Officer (CRO) sent a "Request for Concurrence on Section 106 Compliance" with a finding of "no historic properties affected" to the State Historical Preservation Office (SHPO) on June 8, 2006. The SHPO responded on July 21, 2006, with a request for: (1) additional investigation of the sub-surface area of potential effects for the new outfall, which is proposed to be constructed near the Sacramento River, and (2) a determination of eligibility to the National Register of Historic Places (NRHP) for the WPCP that was originally constructed in 1929. Per the SHPO's request, the City conducted geoarchaeological investigations for the Project. The CRO sent additional information to the SHPO on August 2, 2007. On August 22, 2007, the SHPO concurred with the CRO's determination that the WPCP was not eligible for the NRHP and that no historic properties would be affected by construction of the Project. This concurrence covered both Phases 1 and 2.

State Water Board staff compared the City'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 the staff analysis of air quality impacts.

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

FISCAL IMPACT

Applicant's Finances

An independent credit review, analyzed the City'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 City's estimated 2007 median household income (MHI) is $35,686, approximately 63.9 percent of the State of California MHI. Therefore, the City qualifies as a Disadvantaged Community.

As a Disadvantaged Community, the City is eligible for principal forgiveness. The City is requesting CWSRF Program financing of $5,422,120. In accordance with State Water Board Resolution No. 2009-0027, the City is eligible for a maximum principal forgiveness amount of $2 million, as the City's wastewater rates are less than 1.5 percent of the community's MHI. The remaining funds will be financed with a 20-year, one percent (1%) financing. A 20-year, $3,422,120 financing at one percent (1%) will require annual debt service payments of $189,638. The City is approved for a maximum financing amount of $7.25 million.

The City currently has two other CWSRF financings secured by the Sewer Enterprise Fund and Public Facilities Impact Fees Account.

Issue Date	Project Description	Matures	Outstanding Principal
1997	4504-120 Wastewater Treatment Plant Expansion	10/2020	$23,212,804
2007	4997-110 Water Pollution Control Plant Expansion	10/2029	$40,624,861

The net revenues of the Sewer Enterprise Fund and Public Facilities Impact Fees Account will provide debt service coverage of at least 1.66 times all debt.

The City has completed Proposition 218 noticing and hearing for rate increases through 2012/13.

CWSRF PROGRAM FISCAL IMPACT

As of 04/08/2009:	**SFY 2008-09**	**SFY 2009-10**	**SFY 2010-11**	**SFY 2011-12**	**SFY 2012-13**
Beginning Balance	$304,759,806	$382,639,062	$235,933,437	$219,913,407	$366,266,721
Estimated Repayments	$201,878,740	$217,847,641	$227,847,641	$237,847,641	$247,847,641
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	$46,720,099	$	$	$
ARRA Grant	$269,074,368	$	$	$	$
State G.O. Bond Proceeds	$13,414,123	$ 0	$	$	$
Local Match Credits	$22,851,524	$6,748,551	$5,083,435	$5,083,435	$833,350
SMIF Interest	$10,674,552	$10,000,000	$10,000,000	$8,000,000	$2,000,000
Estimated Disbursements	($447,650,734)	($240,879,479)	($158,553,961)	($52,860,956)	($11,500,000)
Subtotal	$393,274,061	$391,318,331	$288,854,123	$387,755,323	$577,733,508
Proposed Projects Estimated Disbursements					
City of Brawley 4502-110	($1,059,000)	($12,708,000)	($11,633,000)		
Kelseyville CWWD 4593-110		($2,719,007)	($521,861)		
City of Chico 4997-120		($5,422,120)			
East Bay Municipal Utility District 5020-110		($35,226,616)			
Eastern Municipal Water District 5100-110		($14,098,119)	($21,698,067)	($2,566,704)	
City of Hughson 5139-110	($3,000,000)	($20,000,000)			
City of Kerman 5150-110		($4,000,000)	($2,900,000)	($921,898)	
Beaumont-Cherry Valley WD 5157-110		($15,000,000)	($2,500,000)		
Inland Empire Utilities Agency 5176-110	($5,676,000)	($17,013,999)	($11,000,001)		
Delta Diablo Sanitation District 5177-110		($9,359,883)	($389,995)		
Eastern Municipal Water District 5311-110		($18,000,000)	($18,000,000)	($18,000,000)	

As of 04/08/2009:	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12	SFY 2012-13
Inland Empire Utilities Agency 5332-110	($900,000)	($600,000)			
Gold Ridge Resource Conservation District 6935-110		($160,000)			
Gold Ridge Resource Conservation District 6936-110		($412,150)	($196,437)		
Humboldt County Resource Conservation District, 6942-110		($110,000)	($70,000)		
Mendocino County Department of Transportation, 6944-110		($175,000)			
City of Santa Rosa 6945-110		($380,000)			
Ending Balance on June 30:	**$ 382,639,061**	**$ 235,933,437**	**$ 219,913,407**	**$ 366,266,721**	**$ 577,733,508**

Notes:

- Estimated Repayments include repayments from existing and future financing.
- 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."

REGIONAL BOARD IMPACT

The City's WPCP operates under Waste Discharge Requirements (WDR) issued under Central Valley Regional Water Quality Control Board Order No. R5-2004-0073 (NPDES Permit No. CA0079081). The WDR became effective on June 4, 2004.

POLICY ISSUE

Should the State Water Board:

1. Adopt a SOC for the City's Project?
2. Condition the financing agreement, as determined by the City's credit review, with the following items:
    a. A reserve fund, equal to one year's debt service, must be established by the City prior to the completion of construction date; and
    b. The financing agreement shall be limited to a maximum of $7.25 million unless information supporting the credit review changes?
3. Approve a CWSRF PFC of $5,422,120 for the City's Project, comprised of $2 million in ARRA principal forgiveness funds and $3,422,120 in non-ARRA financing for a 20-year term at one percent (1%)? The first repayment is due one year after completion of construction.
4. Condition this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF agreement by July 15, 2009, in accordance with Section IX (K) of the Policy? Authorize Division staff discretion to approve up to a 120-day extension for good cause?
5. Condition this approval such that the City must meet the following deadlines:
    a. A financing agreement must be executed or be executable by July 15, 2009;
    b. The Division must receive a completed Approval of Award (AOA) request by July 25, 2009; and

c. The Division must receive a copy of an executed construction contract by July 25, 2009?

6. Condition this approval such that the City 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?

7. Condition this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by the ARRA, including, but not limited to, provisions related to principal forgiveness? The City may still be eligible for CWSRF funding at the standard financing rate, if CWSRF Program funding is available.

8. Condition this approval such that the City must adopt an updated authorized representative resolution prior to execution of a CWSRF Program financing agreement?

9. Grant a waiver from the Policy, allowing reimbursement of eligible construction costs incurred after acceptance of the FPA by the City and prior to issuance of the PFC? Any construction costs incurred prior to issuance of the PFC are at the City's risk, and costs cannot be reimbursed until a financing agreement is executed. Issuance of a PFC does not guarantee a financing agreement will be executed.

STAFF RECOMMENDATION

The State Water Board should:

1. Adopt a SOC for the City's Project;

2. Condition the financing agreement, as determined by the City's credit review, with the following items:

    a. A reserve fund, equal to one year's debt service, must be established by the City prior to the completion of construction date; and

    b. The financing agreement shall be limited to a maximum of $7.25 million unless information supporting the credit review changes.

3. Approve a CWSRF PFC of $5,422,120 for the City's Project, comprised of $2 million in ARRA principal forgiveness funds and $3,422,120 in non-ARRA financing for a 20-year term at one percent (1%). The first repayment is due one year after completion of construction;

4. Condition this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF agreement by July 15, 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 the City must meet the following deadlines:

    a. A financing agreement must be executed or be executable by July 15, 2009;

    b. The Division must receive a completed AOA request by July 25, 2009; and

    c. The Division must receive a copy of an executed construction contract by July 25, 2009.

6. Condition this approval such that the City 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;
7. Condition this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by the ARRA, including, but not limited to, provisions related to principal forgiveness. The City may still be eligible for CWSRF funding at the standard financing rate, if CWSRF Program funding is available;
8. Condition this approval such that the City must adopt an updated authorized representative resolution prior to execution of a CWSRF Program financing agreement; and
9. Grant a waiver from the Policy, allowing reimbursement of eligible construction costs incurred after acceptance of the FPA by the City and prior to issuance of the PFC. Any construction costs incurred prior to issuance of the PFC are at the City's risk, and costs cannot be reimbursed until a financing agreement is executed. Issuance of a PFC does not guarantee a financing agreement will be executed.

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.

D R A F T

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-

ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND EXECUTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF CHICO (CHICO), WATER POLUTION CONTROL PLANT (WPCP) OUTFALL PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4997-120

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) in 1987 and most recently 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 Priority List which included the City's Project in Priority Class C;
5. The Division of Financial Assistance (Division) approved the Facility Plan for the City's Project on May 21, 2009, and the City accepted the Facility Plan Approval (FPA) on May 22, 2009;
6. An independent credit review was completed on February 20, 2009, recommending a maximum credit limit of $7.25 million for the City's Project;
7. The City is a disadvantaged community eligible for a maximum of $2 million in principal forgiveness, as the City's wastewater rates are less than 1.5 percent of the community's median household income;
8. The City certified an environmental impact report (EIR) (State Clearinghouse No. 2004022111), approved the Project, and adopted a Mitigation and Monitoring Plan and a SOC for the Project on October 18, 2005;
9. The City filed a Notice of Determination with the Governor's Office of Planning and Research on October 20, 2005, and with the Butte County Clerk on October 24, 2005;
10. The City adopted an SOC to substantiate its decision to approve the Project despite significant unavoidable impacts on the Sacramento River from mercury, and growth inducement in the City;
11. The State Water Board adopted on December 4, 2007, its own SOC for unavoidable adverse Phase 1 project impacts on the Sacramento River from mercury and growth inducement in the City resulting from the expansion of the WPCP (Resolution No. 2007-0065);

12. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Phase 2 Project outweigh the unavoidable adverse environmental impacts:
    - The relocation of the outfall will provide for continued, reliable sewer service from the WPCP by preventing silt and gravel from blocking the outfall;
    - Expansion of the WPCP, and thus the outfall, will avoid further nitrate contamination of groundwater caused by existing septic systems;
    - The Project will enable the City to continue to meet its National Discharge Elimination System permit requirements for discharge of effluent into the Sacramento River;
    - Approval of the Project will allow the City to implement its General Plan and provide for anticipated growth, including the provision of housing;
13. State Water Board staff reviewed and considered the EIR and applicable environmental documents and determined that the Project will not result in any additional significant adverse water quality impacts; and
14. The following Special Condition is applicable to the Project:
    - U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration Fisheries-National Marine Fisheries Service (NMFS) issued Biological Opinions (BOs) for the Project. The BOs include reasonable and prudent measures necessary and appropriate to minimize adverse Project effects on special-status species. The City will have to comply with NMFS' and USFWS' non-discretionary terms and conditions, which implement the reasonable and prudent measures. The terms and conditions from USFWS and NMFS will be included as special conditions in Exhibit D of the City's CWSRF financing agreement and can also be found in the BOs.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the above SOC for the City's Project;
2. Conditions the financing agreement, as determined by the City's credit review, with the following items:
    a. A reserve fund, equal to one year's debt service, must be established by the City prior to completion of construction date; and
    b. The financing agreement shall be limited to a maximum of $7.25 million unless information supporting the credit review changes;
3. Approves a CWSRF Program PFC of $5,422,120 for the City's Project, comprised of $2 million in ARRA principal forgiveness funds and $3,422,120 in non-ARRA financing for a 20-year term at one percent (1%). The first repayment is due one year after completion of construction;
4. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF agreement by July 15, 2009, in accordance with Section IX (K) of the Policy. Division staff should have the discretion to approve up to a 120-day extension for good cause;

5. Conditions this approval such that the City must meet the following deadlines:
    a. A financing agreement must be executed or be executable by July 15, 2009;
    b. The Division must receive a completed Approval of Award request by July 25, 2009; and
    c. The Division must receive a copy of an executed construction contract by July 25, 2009;
6. Conditions this approval such that the City 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;
7. Conditions this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by the ARRA, including, but not limited to, provisions related to principal forgiveness. The City may still be eligible for CWSRF funding at the standard financing rate, if CWSRF Program funding is available;
8. Conditions this approval such that the City must adopt an updated authorized representative resolution prior to execution of a CWSRF Program financing agreement; and
9. Grants a waiver from the Policy, allowing reimbursement of eligible construction costs incurred after acceptance of the FPA by the City and prior to issuance of the PFC. Any construction costs incurred prior to issuance of the PFC are at the City's risk, and costs cannot be reimbursed until a financing agreement is executed. Issuance of a PFC does not guarantee a financing agreement will be executed.

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 June 16, 2009.

_____
Jeanine Townsend
Clerk to the Board