

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING - DIVISION OF FINANCIAL ASSISTANCE  
AUGUST 3, 2010**

**ITEM 6**

**SUBJECT**

CONSIDERATION OF A RESOLUTION ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (DISTRICT), CAPAY DIVERSION DAM APRON RETROFIT PROJECT (PROJECT), CWSRF PROJECT NO. C-06-6601-110

**DISCUSSION**

The District applied for CWSRF funding to repair and retrofit the concrete apron at the District's Capay Diversion Dam (Dam). The Project qualifies for CWSRF funding because it is consistent with the state's strategy for implementation of nonpoint source projects or programs by reducing the potential for erosion and sedimentation in the watershed. Because this Project is not routine, the Project's PFC must be presented to the State Water Resources Control Board (State Water Board) for consideration.

The State Water Board adopted the *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities* (Policy), on March 17, 2009. While this Project is not constructing a wastewater treatment plant, the Division of Financial Assistance (Division) follows the procedures established in the Policy to the extent practicable for Expanded Use Projects. According to the Policy, projects on the adopted Project Priority List (PPL) 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 8, 2010, the Assistant Deputy Director of the Division issued the FPA for the District's Project. The District agreed to the FPA on June 9, 2010. The Division finds 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 PPL adopted by the State Water Board. The State Water Board, on June 15, 2010, adopted the State Fiscal Year (SFY) 2010/2011 CWSRF Program PPL, which includes the District's Project in Priority Class D.

**PROJECT INFORMATION**

The Dam is located on Cache Creek, approximately two miles northwest of the Town of Capay, in northwestern unincorporated Yolo County. It was built in 1914 to divert water released from Clear Lake or Indian Valley Reservoir into agricultural water delivery channels, north, and south of Cache Creek. The Cache Creek channel has deepened, in part, due to past gravel mining. On occasion, the channel deepening has partially undermined the Dam's concrete apron buttressing on the downstream side. This makes the Dam susceptible to overturning. The stability of the Cache Creek stream channel is dependent on the Dam staying in place. An approximate 15-foot difference in bed elevation, upstream to downstream, currently exists at the Dam. Should the Dam fail, a 15-foot deep head cut would rapidly migrate upstream, releasing large quantities of sediment, which contain sequestered mercury.

The proposed Project will rehabilitate the Dam and apron by 1) providing structural reinforcement to the concrete vertical abutment walls at each end of the Dam, 2) partially replacing and extending the existing apron and 3) installing a new grade control structure downstream from the Dam.

The new concrete apron will cover the entire width of the existing apron and will extend beyond the existing apron in the downstream direction. The apron will be made of roller compacted concrete. The toe of the apron will be capped with raised baffle blocks to assist in forming a hydraulic jump on the apron and improving the energy dissipation of flows.

The concrete grade control structure will be located approximately 150 feet downstream from the Dam and be limited to the incised portion of Cache Creek. The structure will consist of a concrete wall that is cast into the bed of Cache Creek and keyed into the incised banks. The top of the wall will be at-grade with the existing streambed elevation.

The Project will stabilize the Dam and help protect the beneficial uses of the Cache Creek watershed, as set forth by the Central Valley Water Quality Control Board's (Central Valley Water Board) Basin Plan.

## **ENVIRONMENTAL REVIEW**

The District prepared an Initial Study and Mitigated Negative Declaration (IS/MND; State Clearinghouse No. 2009052047) for the Project. The IS/MND was distributed to the public and circulated through the State Clearinghouse for review from May 13, 2009, through June 11, 2009. The District received comment letters from three state agencies, including:

1. California Department of Transportation regarding a need to prepare and submit a traffic management plan for its review.
2. California Department of Water Resources (DWR) regarding the Dam being classified as out of jurisdiction by DWR, Division of Safety of Dams, and to submit a construction application for any modifications to the Dam that would bring it back under its jurisdiction.
3. Central Valley Flood Protection Board regarding the Project being within its jurisdiction, and a requirement to obtain a permit.

The District responded to all the comments and revised the IS/MND as applicable. The District adopted the IS/MND and a Mitigation Monitoring and Reporting Program (MMRP) and approved the Project on July 7, 2009. The District filed a Notice of Determination (NOD) with the Yolo County Clerk on July 8, 2009, and the Governor's Office of Planning and Research (OPR) on July 9, 2009. The District prepared an addendum to the IS/MND (Addendum IS/MND) to address edits and remove unnecessary biological resource mitigation measures. The District adopted the Addendum IS/MND and a revised MMRP on March 6, 2010, and filed an NOD with OPR on April 8, 2010, and the Yolo County Clerk on April 9, 2010.

On March 23, 2010, the United States Fish and Wildlife Service (USFWS) issued a Biological Opinion (BO) with required conservation measures. It determined that the Project may affect but is not likely to adversely affect the federally threatened giant garter snake (*Thamnophis gigas*), and may affect and is likely to adversely affect federally threatened Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*). The USFWS also concurred that the Project can be appended to the USFWS's *Formal Programmatic Consultation Permitting Projects with Relatively Small Effects on the Valley Elderberry Longhorn Beetle Within the Jurisdiction of the Sacramento Field Office (Programmatic Consultation, USFWS file number 1-1-96-F-0066)*. The District will implement mitigation measures to reduce biological resource impacts to a less than significant level, and will implement the conditions from the BO.

The State Water Board's Cultural Resources Officer (CRO) reviewed the documents submitted by the District for the Project. The CRO determined that the District provided sufficient documentation to support a Section 106 determination of "no historic properties affected" for the Project and that a Tier II review was appropriate. Additionally, the United States Army Corps of Engineers (USACOE) requested a Section 106 concurrence on a finding of "no historic properties affected" and an evaluation of the Dam for listing on the National Register of Historic Places (NRHP) with the State Historic Preservation Officer (SHPO) on December 30, 2009. SHPO concurred with USACOE's findings and determined that the Dam is not eligible for listing on the NRHP on January 20, 2010.

The Project is located in the Sacramento Valley Air Basin. The Yolo-Solano Air Quality Management District regulates air quality in Yolo County, which is federally designated serious nonattainment for the eight-hour ozone standard, partially federally designated nonattainment for the particulate matter 2.5 microns in diameter (PM<sub>2.5</sub>) standard, and is in attainment or unclassified for all other federal criteria pollutants. The estimated construction air emissions are less than the federal de minimis levels for reactive organic gases, oxides of nitrogen, and PM<sub>2.5</sub>, and are less than ten percent of the air emissions inventory for the basin area. Project construction will be short-term and temporary, and the District will implement mitigation measures to reduce air quality impacts to a less than significant level. Thus, a conformity determination is not required for this Project.

State Water Board staff reviewed and considered the environmental documents, and determined that the Project will not result in any significant adverse water quality impacts. State Water Board staff evaluated the potential Project impacts and determined that a Tier II review was appropriate. State Water Board staff determined that no further investigation or federal consultation for this Project is required because there has been sufficient biological investigation and federal consultation, and the Project is not expected to adversely impact federally listed species with implemented conservation and mitigation measures. Special environmental conditions will be added to Exhibit D of the District's Expanded Use CWSRF financing agreement to ensure compliance with the Clean Water Act, the federal Endangered Species Act, the California Environmental Quality Act, and the Migratory Bird Treaty Act.

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

## **FISCAL IMPACT**

### **Applicant Finances:**

An independent credit review analyzed the District's ability to enter into a financing agreement for the amount of \$4.4 million for construction and allowance costs. The credit review provided recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity, and reserve fund requirements for the financing agreement. After allowing for the operations and maintenance costs for the entire District, estimated at \$4,011,871 for fiscal year 2008/09; the net revenues of the District are approximately \$402,488. The District has no current outstanding debt.

The District has cash and investments estimated at \$4,358,524 as of January 1, 2010.

**Security and Source of Financing Repayment:**

The District proposes to dedicate the net revenues to repayment of the proposed financing agreement.

A financing agreement in the amount of \$4.4 million for a twenty year term at an estimated interest rate of 2.70 percent will have an annual debt service of \$287,607. When this debt service is compared to the net revenues for fiscal year 2008/09, the result is 1.40 times coverage. Based on the 10 month budgeted amounts for fiscal year 2009/10, there is a negative net revenues figure; however, considering the drought period with the projected fiscal year 2009/10 being the extreme low revenue year and looking at the five-year average of all revenues and expenses the figures are good for debt service coverage. Based on a five year average, the average total revenues are \$4,488,917; average expenses are \$3,930,248; leaving average net revenues of \$558,669. Comparing the five year average net revenues to total debt service results in a 1.94 times time coverage. The actual interest rate for the Project’s CWSRF financing agreement shall be half the most recent general obligation bond rate obtained by the State Treasurer’s Office as of the date that the PFC is approved.

**Comparative Revenue and Expense Analysis:**

The revenues and expenses for the District for the past four fiscal years are summarized below:

| <b>Fiscal Year</b>                    | <b>2005/06</b>     | <b>2006/07</b>     | <b>2007/08</b>     | <b>2008/09</b>     | <b>2009/10*</b>      | <b>5 Year Average</b> |
|---------------------------------------|--------------------|--------------------|--------------------|--------------------|----------------------|-----------------------|
| Water Sales                           | \$2,135,106        | \$2,748,104        | \$3,284,192        | \$2,937,486        | \$1,695,834          | \$2,560,144           |
| Hydroelectric Power Sales             | \$1,146,185        | \$986,462          | \$568,303          | \$260,960          | \$ 105,461           | \$613,474             |
| Recreation Fees/Other                 | \$12,491           | \$13,662           | \$34,071           | \$3,070            | \$4,717              | \$13,602              |
| Property Taxes                        | \$370,872          | \$787,287          | \$948,643          | \$918,922          | \$781,628            | \$760,870             |
| Federal & State Grants                | \$439,109          | \$644,600          | \$233,761          | \$102,420          | \$58,615             | \$295,701             |
| Interest Income                       | \$268,001          | \$352,642          | \$353,535          | \$191,521          | \$59,930             | \$245,126             |
| <b>Total Revenues</b>                 | <b>\$4,371,764</b> | <b>\$5,532,757</b> | <b>\$5,422,505</b> | <b>\$4,414,379</b> | <b>\$2,706,185</b>   | <b>\$4,488,917</b>    |
| <b>Total Expenses</b>                 | <b>\$2,817,267</b> | <b>\$4,527,736</b> | <b>\$4,131,537</b> | <b>\$4,011,871</b> | <b>\$4,155,831</b>   | <b>\$3,930,248</b>    |
| <b>Net Available for Debt Service</b> | <b>\$1,554,497</b> | <b>\$1,005,021</b> | <b>\$1,290,968</b> | <b>\$402,488</b>   | <b>(\$1,449,646)</b> | <b>\$558,669</b>      |
| Proposed Debt Service                 | \$0                | \$0                | \$0                | \$287,607          | \$287,607            | \$287,607             |
| <b>Debt Service Coverage</b>          | <b>n/a</b>         | <b>n/a</b>         | <b>n/a</b>         | <b>1.40</b>        | <b>none</b>          | <b>1.94</b>           |

\*fiscal year 2009/10 figures based on 10 month budgeted income statement ending 2/28/10. Final numbers are 10 month figures divided by 10 months then multiply by 12 months to equal estimated figures.

## CWSRF PROGRAM FISCAL IMPACT

| (as of 06/14/2010)                                 | SFY                  | SFY                 | SFY                  | SFY                  | SFY                  |
|--|----------------------|---------------------|----------------------|----------------------|----------------------|
|  | 2009-10              | 2010-11             | 2011-12              | 2012-13              | 2013-14              |
| Beginning Balance:                                 | \$425,553,508        | \$226,508,907       | (\$28,060,117)       | \$128,222,766        | \$312,186,316        |
| Estimated Repayments                               | \$215,849,951        | \$225,849,951       | \$235,849,951        | \$245,849,951        | \$255,849,951        |
| 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         | \$139,892,160       | \$133,230,720        | \$28,800,000         | \$28,800,000         |
| ARRA Grant   |                      |                     |                      |                      |                      |
| State G.O. Bond proceeds (less state admin. match) | \$153,477            | \$0                 | \$0                  | \$0                  | \$0                  |
| Local Match Credits                                | \$10,812,241         | \$7,661,103         | \$1,654,588          | \$833,350            | \$833,350            |
| Est. SMIF Interest:                                | \$2,700,000          | \$3,000,000         | \$3,000,000          | \$3,000,000          | \$3,000,000          |
| Estimated Disbursements                            | (\$443,522,828)      | (\$492,135,969)     | (\$131,701,778)      | (\$12,930,197)       | (\$7,753,555)        |
| <b>Subtotal</b>                                    | <b>\$226,508,907</b> | <b>\$79,319,723</b> | <b>\$183,745,160</b> | <b>\$366,061,666</b> | <b>\$569,094,233</b> |

|  |                |                |                |                |
|--|----------------|----------------|----------------|----------------|
| Eastern Municipal Water District (San Jacinto), #5159-110 (12/21/2009)     | (\$44,209,128) | (\$54,869,804) | (\$53,875,350) | (\$41,796,170) |
| Yurok Tribe, #5348-110 (05/19/2010)  | (\$18,750,000) |                |                |                |
| Victor Valley Wastewater Rec Authority, #5376-110 (02/23/2010)             | (\$21,000,000) |                |                |                |
| Sonoma Valley County Sanitation District, #5501-110 (04/27/2010)           | (\$4,100,000)  |                |                |                |
| City of Burbank (Valhalla Extension), #5533-110 (05/12/2010)               | (\$7,500,000)  |                |                |                |
| Yolo County Flood Control & Water Cons.(Capay Dam), #6601-110 (05/12/2010) | (\$4,220,712)  |                |                |                |
| El Toro Water District (Northline Lift Station), #7245-110 (03/25/2010)    | (\$4,200,000)  | (\$652,590)    |                |                |
| City of Redding, #7456-110 (02/26/2010)                                    | (\$3,400,000)  |                |                |                |

|  |                      |                       |                      |                      |                      |
|--|----------------------|-----------------------|----------------------|----------------------|----------------------|
|  | <b>\$226,508,907</b> | <b>(\$28,060,117)</b> | <b>\$128,222,766</b> | <b>\$312,186,316</b> | <b>\$527,298,063</b> |
|--|----------------------|-----------------------|----------------------|----------------------|----------------------|

**Notes:**

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

## **REGIONAL WATER BOARD IMPACT**

The District's Project does not impact the Central Valley Water Board.

## **LEGAL REVIEW**

The District certifies that all rate setting was done pursuant to Proposition 218, with rates last set on April 4, 2008.

The District's legal counsel provided an opinion that the District possesses the legal authority to enter into this financing agreement.

The District's counsel has not yet provided an opinion that the District obtained all the necessary property rights for the Project, as required by the Policy. The Division recommends that Board condition approval of this Project on receipt of such an opinion prior to execution of the CWSRF financing agreement.

The District's counsel represented that the District has no pending or anticipated litigation, contractual/ratepayer disputes, or audit findings that would affect the ability of the District to satisfy its obligations under the CWSRF financing agreement.

## **POLICY ISSUE**

Should the State Water Board:

1. Approve a CWSRF PFC of \$4,220,712 for the proposed Project, with a repayment period of 20 years, and the first repayment due one year after completion of construction?
2. Condition the financing agreement, as determined by the District's credit review, with the following items:
  - a. The District shall establish a Reserve Fund equal to \$2 million, approximately equal to seven year's debt service, from available cash prior to the completion of construction date; and
  - b. The financing agreement shall be limited to a maximum amount of \$4.4 million, unless new information supporting the credit review changes and a supplemental credit review is performed?
3. Condition this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by December 31, 2010, in accordance with Section IX(k) of the Policy? Authorize the Deputy Director of the Division or designee to have the discretion to approve up to a 120-day extension of the PFC for good cause?
4. Condition the financing agreement to require the District to implement the measures identified in the March 23, 2010, U.S. Fish and Wildlife Service BO to minimize potential adverse Project effects on valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and federally-listed giant garter snake (*Thamnophis gigas*)? These measures will be included as special conditions in Exhibit D of the District's CWSRF financing agreement.

5. Condition this approval by requiring, prior to execution of the CWSRF financing agreement, an opinion from District counsel certifying that the District has sufficient property rights in the land used for all portions of the Project, describing each right and each portion, to enable the District to access, construct, operate, maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer?

## STAFF RECOMMENDATION

The State Water Board should:

1. Approve a CWSRF PFC of \$4,220,712 , for the District's Project, with a repayment period of 20 years, and the first repayment due one year after completion of construction;
2. Condition the financing agreement, as determined by the District's credit review, with the following items:
  - a. The District shall establish a Reserve Fund equal to \$2 million from available cash prior to the completion of construction date.
  - b. The financing agreement shall be limited to a maximum amount of \$4.4 million, unless new information supporting the credit review changes and a supplemental credit review is performed.
3. Condition this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by December 31, 2010, in accordance with Section IX(K) of the Policy. Authorize the Deputy Director of the Division or designee to have the discretion to approve up to a 120-day extension of the PFC for good cause;
4. Condition the financing agreement to require the District to implement the measures identified in the March 23, 2010, U.S. Fish and Wildlife Service BO to minimize potential adverse Project effects on valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and federally-listed giant garter snake (*Thamnophis gigas*). These measures will be included as special conditions in Exhibit D of the District's CWSRF financing agreement; and
5. Condition this approval by requiring, prior to execution of the CWSRF financing agreement, an opinion from District counsel certifying that the District has sufficient property rights in the land used for all portions of the Project, describing each right and each portion, to enable the District to access, construct, operate, maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer.

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.

# DRAFT

## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE YOLO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (DISTRICT), CAPAY DIVERSION DAM APRON RETROFIT PROJECT (PROJECT), CWSRF PROJECT NO. C-06-6601-110

### 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) on March 17, 2009;
2. The State Water Board, on June 15, 2010, adopted the State Fiscal Year (SFY) 2010/2011 CWSRF Program Project Priority List, which included the District's Project in Priority Class D;
3. The Division of Financial Assistance (Division) approved the Facility Plan for the District's Project on June 8, 2010, and the District accepted the Facility Plan Approval on June 9, 2010;
4. An independent credit review completed on March 11, 2010 recommended a maximum financing amount of \$4.4 million, assuming a 20-year term at a 2.70 percent (2.70%) interest rate;
5. The District prepared an Initial Study and Mitigated Negative Declaration (IS/MND), distributed it to the public, and circulated it through the State Clearinghouse (State Clearinghouse No. 2009052047);
6. The District adopted the IS/MND and a Mitigation Monitoring and Reporting Program (MMRP), and approved the Project on July 7, 2009;
7. The District filed a Notice of Determination (NOD) with the Yolo County Clerk on July 8, 2009 and the Governor's Office of Planning and Research (OPR) on July 9, 2009, for the IS/MND. The District adopted an addendum to the IS/MND and a revised MMRP on March 6, 2010, and filed an NOD with OPR on April 8, 2010, and the Yolo County Clerk on April 9, 2010;
8. The State Water Board finds that the Project will not have any significant adverse water quality impacts; and
9. 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.

### THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts a CWSRF PFC of \$4,220,712 for the District's Project, with a repayment period of 20 years, and the first repayment due one year after completion of construction;

## D R A F T

2. Conditions the financing agreement, as determined by the District's credit review, with the following items:
  - a. The District shall establish a Reserve Fund equal to \$2 million from available cash prior to the completion of construction date;
  - b. The financing agreement shall be limited to a maximum amount of \$4.4 million, unless new information supporting the credit review changes and a supplemental credit review is performed;
3. Conditions this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by December 31, 2010, in accordance with Section IX(K) of the Policy. Authorizes the Deputy Director of the Division or designee to have the discretion to approve up to a 120-day extension of the PFC for good cause;
4. Conditions the financing agreement to require the District to implement the measures identified in the March 23, 2010, U.S. Fish and Wildlife Service Biological Opinion to minimize potential adverse Project effects on valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) and federally-listed giant garter snake (*Thamnophis gigas*). These measures will be included as special conditions in Exhibit D of the District's CWSRF financing agreement; and
5. Conditions this approval by requiring, prior to execution of the CWSRF financing agreement, an opinion from District counsel certifying that the District has sufficient property rights in the land used for all portions of the Project, describing each right and each portion, to enable the District to access, construct, operate, maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer.

### 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 August 3, 2010.

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Jeanine Townsend  
Clerk to the Board