

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

Joseph Cylwik

4/3/2013

[City of Big Bear Lake](#)

1. I respectfully request that the Division and the State Water Board make changes to eligibility requirements for Small Community Wastewater Grants.

The CWSRF Policy does not directly establish eligibility for Small Community Wastewater Grants. These criteria are found in the CWSRF's annual Intended Use Plan. Staff contacted the commenter, and advised him that this comment should be submitted during the IUP's public comment period. The IUP is projected to be distributed for public comment in late July or August.

Jeanne Cole

4/24/2013

[City of San Diego](#)

1. The coverage ratios are confusing and inconsistent with traditional indenture requirements because they require higher debt coverage for subordinate debt than for senior debt, and they do not address aggregate debt. The current Policy is much clearer and addresses additional debt test in a more definitive manner.

Staff agrees that changing the existing debt coverage requirements may conflict with the existing debt instruments of some borrowers, and recommends retaining the debt coverage provisions in the existing Policy. Staff has prepared a change sheet to show the suggested changes.

2. The City suggests that staff conduct informational workshops to explain to applicants the extensive application formatting and process changes.

Staff acknowledges the comment, and will be conducting outreach to roll out the new applications.

Joyce Dillard

4/24/2013

[General Public](#)

1. We disagree with the inclusion of a 501(c)(3) non-profit organization in the definition of "applicant." They do not have a form of representation for Due Process, or a requirement for public meetings and processes. Citizens have no vote to have non-profit organizations represent them. Mission Statements do not always encompass the needs of its citizens as a public benefit corporation, and there is little oversight. They do not always issue audited financial statements with GAAP Principles. Indian Tribes are separate nations if federally recognized. Other tribes may be non-profit, membership organizations under state

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

corporation law. We disagree than any non-profit organization be included even if titled as “Indian.”

A 501(c)(3) nonprofit organization is eligible per federal guidance for the CWSRF program, and must meet the requirements applied to other applicants for the CWSRF program.

2. The definition of “storm water project” does not define “determined acceptable for reuse or disposal” or the agency qualified to make such a determination. Where does the agencies whose jurisdiction over Public Health fit into this definition?

The Water Boards regulate the discharge of storm water runoff from municipal storm sewer systems. The Department of Public Health is responsible for public health.

3. In the sustainability point system you do not include any requirements for operations and maintenance as a form of sustainability.

The application credit review includes a review of the applicant’s budget and financial ability to operate and maintain the financed facilities. In addition, the application technical report requires a life cycle analysis. A life cycle analysis compares the full costs, including the long-term operation and maintenance costs, of the technical options available to the applicant.

4. There is no definition of “regional environmental management plans.”

The term regional environmental management plan was not defined specifically to allow flexibility and encourage applicants to engage in regional environmental planning efforts.

5. There is no reference as to the Geology and Soils as a viable resource for this section, if qualified. Not all Geology and Soils warrant a beneficial use for sustainability.

There was insufficient information for staff to evaluate this comment.

6. Conflict of interest codes are not addressed.

The State Water Board maintains an “Incompatible Activities Statement” at http://www.waterboards.ca.gov/laws_regulations/docs/incompatible_activities_statement.doc. All Division of Financial Assistance staff members are required to acknowledge the Incompatible Activities Statement yearly. In addition all Division of Financial Assistance supervisors and managers are required to complete ethics training every two years, and supervisors and managers in decision

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

making roles must file a yearly "Statement of Economic Interests" with the state Fair Political Practices Commission.

7. Are you addressed Gray Water or Rainwater Harvesting in this document. The State definition from other agencies does not include Storm Water.

To the extent that gray water or rainwater harvesting help implement the state's Non-Point Source implementation plan or one of the estuary management plans, these projects would be eligible for financing under Section X of the Policy.

8. You have not addressed non-adjudicated groundwaters.

Projects that address groundwater pollution are generally not eligible for financing from the CWSRF. In the rare cases where a publicly owned treatment works project, such as a leachate treatment system at a municipal landfill, is addressing groundwater, the applicant would have to be in compliance with state laws or court rulings, as would any other applicant regardless of the type of project, regarding the groundwater basin to be eligible for CWSRF financing.

Brian Cullen

4/24/2013

[PERC Water](#)

1. The SWRCB could consider providing financial incentives to local authorities to invest additional capital as necessary into facilities that produce higher water quality than may otherwise be required under a given permit. An example of such incentive is to provide Extended Term Financing, lower interest rates and principal forgiveness.

Water recycling represents a significant percentage of CWSRF financing. The CWSRF's ability to provide additional subsidization, though, such as, ETF, lower interest rates, and principal forgiveness, over and above its already significant subsidized interest rate, is limited. Given the high need to address small, disadvantaged communities and meeting the basic infrastructure needs in California, staff recommends that the Board use its limited pricing power to address those issues before incentivizing the production of recycled water that exceeds permit standards.

2. The draft Policy amendment should include language that allows a local authority to use CWSRF to refinance a project or a portion of a project that has been built and financed with private capital. The CWSRF could take out a portion of the previous financing on condition that the local agency meet specific schedule and compliance requirements. The advantages to this approach are that construction, and therefore compliance, can begin sooner; retaining some private capital in the completed project will allow the CWSRF to increase its available

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

capital for other communities; the private equity investors put their investment “at risk” for completion and performance of the facilities, local agencies can shift the risk of performance to the private sector; and the local agency can rely on the private sector to fund ineligible costs.

Historically, the CWSRF in California has not offered refinancing except in limited circumstances. Although local agencies would clearly benefit financially from the CWSRF’s favorable terms, refinancing in most cases does little to address water quality objectives. Staff suggests that it continue to work with the commenter to develop criteria to distinguish between those situations where private capital and the CWSRF can jointly achieve water quality objectives, and the financial objectives of private investors, and those situations that are purely refinancing.

3. In light of the value of public-private partnerships, we are particularly encouraged that the Board will remove restrictive provisions in the current “Approval of Award” section of the Policy. Those provisions have hampered the ability of local agencies to choose a partnership approach procured under a design-build-operate structure, even when doing so could result in improved water quality delivered more quickly than other available alternatives. We would request that the Board and staff at the State Water Board implement the revised Policy in a manner that maximizes the opportunity for partnerships, rather than in a manner that would limit the project delivery options available to local agencies.

Staff acknowledges the comment.

Judy Kelly, Shelley Luce, Adrienne Harris
4/23/2013

[San Francisco Estuary Partnership, Santa Monica Bay Restoration Commission, and Morro Bay National Estuary Program](#)

1. Page iv: “Executive Summary”: “Estuary cleanup” is not typically used when referring to expanded use projects designed to improve estuary health. The term “enhancement and habitat protection” is recommended.

Staff recommends modifying the executive summary to be consistent with standard nomenclature. Staff has prepared a change sheet to show the suggested changes.

2. Page 1: “II. Purpose and Objective,” second paragraph: Project objectives that must be “essential components of projects...” should not, logically, be considered “secondary” objectives.

Staff recommends the wording of this paragraph be changed to clarify the Water Board’s intent, and has prepared a change sheet to show the recommended changes.

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

3. Page 2: “Definitions,” “Applicant”: We believe the intent is to include California’s three National Estuary Programs (NEPs) as applicants. However, not all of the NEPs are 501(c)(3)s. We suggest clarifying that the NEPs are eligible applicants.

Staff recommends the wording of this definition be changed to reflect that estuary programs are eligible for financing under Section 320 of the Clean Water Act, and has prepared a change sheet to show the recommended changes.

4. Definitions: “Environmental Document”: We suggest you add reference to “substitute environmental documents,” or SEDs, to the list of CEQA documents.

Staff agrees with the comment, and has prepared a change sheet to show the recommended changes.

5. Definitions: “Expanded Use Project”: It is unclear whether storm water projects are eligible for CWSRF financing based on the definition of expanded use project and several references in the body of the Policy. Funding of storm water National Pollutant Discharge Elimination System (NPDES) permit compliance projects is a foundational type of expanded use project because TMDL compliance actions are frequently incorporated into these permits. The Division should continue to fund NPDES permit compliance with CWSRF.

Staff recommends several modifications to clarify the eligibility of storm water projects for financing consistent with the Clean Water Act and US EPA guidance. Projects that are required or are specified by an NPDES permit issued to a municipal storm sewer system owner are eligible as treatment works, as defined under section 212 of the Clean Water Act, if they are publicly owned. Storm water projects that implement California’s non-point source plan or one of the estuary management plans or projects that are not required or specified in an NPDES permit, are eligible regardless of whether the project is publicly or privately owned. The definition of expanded use project and Sections IX and X (including the footnote at the bottom of page 31) are intended to reflect the basis for the eligibility of storm water projects consistent with guidance from US EPA (see http://water.epa.gov/grants_funding/cwsrf/upload/2004_02_17_cwfinance_cwsrf_wetweather.pdf). Staff has prepared a change sheet to show the recommended changes to the Policy to clarify that all storm water projects are eligible for CWSRF.

6. Page 4: Definitions: “Small Disadvantaged Community”: This definition refers to “a community with a population of less than 20,000,” but “community” is not defined in the revised policy. Severely disadvantaged areas often exist within

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

larger communities. We recommend that community be delineated using census block groups.

Staff does not recommend defining community more specifically. The current definition is based on the criteria for small, disadvantaged communities in the most recent state bond law, and is used to coordinate CWSRF and state bond funding for small, disadvantaged communities. In almost all cases, applicants are clearly a community. For other “communities” that are part of larger communities, the State Water Board has specified in the annual Intended Use Plan the availability of principal forgiveness based on a pro-rata analysis. The analysis is typically done using census data, but could also be done using other reliable data.

7. Page 6: “IV.A.2 Priority Classes”: It’s not clear how climate change fits into priority classes A through E. Climate change is an urgent challenge, and CWSRF projects that mitigate climate change causes or support adaptation to climate change effects should be given high priority.

Staff recommends adding climate changes adaptation into the sustainability points system to complement the sustainability point for “energy conservation” intended to address climate change mitigation. Staff has prepared a change sheet to show the recommended changes.

8. Priority Class “B: Pollution of Impaired Water Bodies”: We support prioritizing projects that address 303(d)-listed impairments. However, the language is confusing.

Staff agrees with the comment, and has prepared a change sheet to show the recommended changes.

9. Page 7: “Sustainability Points”: For reasons stated above, we ask that you add a Sustainability Point for projects that address climate change or its effects.

Staff recommends adding climate changes adaptation into the sustainability points system to complement the sustainability point for “energy conservation” intended to address climate change mitigation. Staff has prepared a change sheet to show the recommended changes.

10. Page 7: “Pollution prevention” is missing from the list of expanded use project types in 3.e. Pollution prevention, including source control, can be just as beneficial and cost effective as the resource-saving project types.

Staff believes that water pollution prevention or reduction should be inherent in every CWSRF project. The sustainability point system is intended to identify and

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

reward projects that have features over and above the standard objectives expected from all projects.

11. Page 9: “V. Match Financing. C. Match Terms”: Expanded use projects are often difficult to fund because match financing is not readily available. Therefore, expanded use projects should be eligible for match financing. Page 10: “D. Match Disbursements 1. Allowances (soft costs)”: The Division should revise this section for expanded use projects so that a soft cost billing, like that described in paragraph 2 below “Construction or Equipment Procurement Costs” can be counted toward the matching requirement for expanded use projects.

The California CWSRF annually receives capitalization grants from US EPA as seed money for making loans. One of the requirements of these grants is that the state must match every five federal dollars with one state dollar. In other words, the state is required to contribute 16.7 percent (one of every six dollars) of the initial capital into the CWSRF program. The federal and state capital contributions must remain in the program, plus any interest earnings, in perpetuity for making loans. The methods used by California to obtain its initial capital contribution have been state voter approved bond measures and the match loan financing option.

The match loan financing option in the CWSRF is different than the grant matching often seen in other programs managed by the State Water Board. The match loan financing ratio is fixed at five to one. In other words, when the CWSRF provides match financing, it disburses to applicants five-sixths of the cash for the project and the applicant must pay one-sixth of the project costs. The financing recipient then repays the CWSRF the match portion over the life of the loan. Under CWSRF match loan financing, the applicant helps California meet its matching requirement by paying a portion of the matching funds with each loan payment. The matching funds included in each loan payment become equity in the CWSRF for future loans. In exchange for applicants agreeing to match loan financing, and payment of the matching portion over 20 or 30 years, the CWSRF charges zero percent on match loan financing agreements.

Staff recommends adding some clarifying language in Section V, and has prepared a change sheet to show the recommended changes.

12. Page 11: “VIII. Planning/Design Financing A. Planning/Design Application Requirements”: Planning, design, and implementation or construction may be managed together in one coherent application. The Division should except expanded use projects from the requirement to separate planning/design and construction into two distinct agreements.

Separate planning and design financing are optional. Planning and design financing can be financed separately under Section VIII of the Policy, or the

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

planning and design costs can be reimbursed as part of a construction/implementation agreement under Section IX or X of the Policy. Staff recommends the addition of some clarifying language at the beginning of Section VIII. Staff has prepared a change sheet to show the recommended changes.

13. Page 30: "X. Expanded Use Construction/Implementation Financing": The title of this section should omit the words "Construction/Implementation."

Staff recommends keeping the existing title to be consistent with the language used in the remainder of the Policy and to reflect the wide variety of projects that can be financed under the CWSRF expanded use section of the Policy.

14. Page 30: "X.C.1. Eligible Project Costs": The restriction of storm water eligibility to 1) "construction of facilities," and 2) "publicly owned" storm water projects will severely constrain potential projects that the NEPs or our partners may propose to further the goals of our Comprehensive Conservation and Management Plans.

Staff recommends several modifications to clarify the eligibility of storm water projects for financing consistent with the Clean Water Act and US EPA guidance. Projects that are required or are specified by an NPDES permit issued to a municipal storm sewer system owner are eligible as treatment works, as defined under section 212 of the Clean Water Act, if they are publicly owned. Storm water projects that implement California's non-point source plan or one of the estuary management plans, or projects that are not required or specified in an NPDES permit are eligible regardless of whether the project is publicly or privately owned. The definition of expanded use project and sections IX and X (including the footnote at the bottom of page 31) are intended to reflect the basis for the eligibility of storm water projects consistent with guidance from US EPA on the eligibility of storm water projects (see http://water.epa.gov/grants_funding/cwsrf/upload/2004_02_17_cwfinance_cwsrf_wetweather.pdf). Staff has prepared a change sheet to show the recommended changes to the Policy to clarify that all storm water projects are eligible for CWSRF.

15. Page 32: "X.I.5. Disadvantaged Business Enterprise (DBE)": We recommend the following clarification to (b), which specifies "options" for compliance. The options are not clear.

b. The recipient must submit all completed DBE forms from the selected contractor with the final budget approval package per section XI(c)(2) below. 1) If the recipient has not taken acceptable "good faith" efforts, the Division cannot accept the award of the construction contract. 2) If the recipient has taken acceptable "good faith" efforts and no qualified DBE has bid on the project, the recipient may select the next low, responsive and responsible bidder. Alternatively, 3) it may rebid the contract....

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

Staff recommends that the text be clarified to indicate that the selected “contractor,” not the “recipient,” is required to make the good faith effort, and that if the contractor does not make a good faith effort to locate and hire DBEs, then the recipient must select the next highest contractor or rebid the project. Staff has prepared a change sheet showing the recommended changes.

Tommy Moala

4/24/2013

[San Francisco PUC \(SFPUC\)](#)

1. The priority classes do not support major infrastructure improvements. The classes are all based on the actual or threat of noncompliance with water quality permits, standards or requirements. Older systems that are in need of upgrade, but are well managed, remain a lower priority class. The priority class system does not appear to cover financing for ensuring compliance, reliability and resiliency. To be competitive, a new priority class should be created that supports prudent upgrades of critical facilities with new technology that fosters sustainability including energy efficiency and cogeneration.

CWSRF finances projects with complete applications. Therefore, a complete application affects a project’s competitiveness more than the project’s priority classification. The recent history of the CWSRF is that it has sufficient cash and bonding capacity to finance all projects with complete applications (see http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/cw_srf/fncng_actvty.pdf for the CWSRF’s recent financing activity), and staff is actively seeking applications for new projects that it can finance. Division staff would welcome new applications from the commenter, and believe that complete applications from the City would be financed under the existing priority classes.

2. The addition and the scope of the “sustainability” points is good. The State Water Board should make this more meaningful by more heavily weighting those that have greater impact.

There was insufficient information for staff to evaluate the relative weightings of the proposed sustainability points.

3. Under the NPDES permit rules, the Waste Discharge Requirements for sanitary sewer system, and other regulatory requirements, it is clear that a combined sewer system facilities are not POTWs. The SFPUC is only one of two cities in CA with a combined sewer system, and thus, would not be considered a POTW. Our NPDES permits have specific requirements based on national policy and local water quality protection. Therefore, we request that you specifically state “... sanitary and combined sewer systems ...” so that we may be eligible for CWSRF funding.

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

Projects addressing discharges from combined sewer systems are eligible for CWSRF financing. Staff has prepared a change sheet to reflect that funding for combined sewer systems is eligible.

4. Replacement of facilities that have exceeded their useful life and can no longer provide reliable service should be allowed even though the facility was originally financed with Clean Water Grant or Clean Water State Revolving Fund.

Staff agrees with the comment, and has prepared a change sheet to show the recommended changes.

5. The draft Policy provides higher priority for small to low income communities. SFPUC projects typically do not qualify due to high income levels within San Francisco. However, the SFPUC does serve low income/disadvantaged communities. The SFPUC encourages the SWRCB to expand consideration by inserting into the project funding equation, a “bang for the buck” consideration for projects that benefit large communities of which some are low income. Funding could be tied to a specific sustainability or efficiency aspect of the project. The SRF can encourage these projects with a 50/50 local/SRF match to ensure that sustainability and climate change issues are addressed with projects.

CWSRF finances projects with complete applications. Therefore, a complete application is the biggest factor affecting a project’s competitiveness. In addition, since 2010 the CWSRF has provided additional subsidy, in the form of loan forgiveness, to two categories of disadvantaged communities. As with CWSRF loan funds, loan forgiveness funds are given to those applicants that submit complete applications. The annual Intended Use Plans posted at http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/pubs.shtml#annual provide further detail regarding loan forgiveness, fund availability, and financing terms.

6. The CWSRF would be more attractive if the State Water Board provided 30-year, extended term, financing (ETF). The Policy assumes the default term is still 20 years, and that a project has to prove 30-year financing is needed. The “necessary to make project affordable” requirement is subjective and difficult to meet. The standard capital market term for new construction is 30 years, not 20 years. New SFPUC assets which could be built with CWSRF funds are expected to have asset lives of 40 to 50 years (or longer). SFPUC recommends that the CWSRF repayment term be changed to 30 years, and the project affordability requirement be removed.

The CWSRF’s ability to provide additional subsidization, such as, ETF, lower interest rates, and principal forgiveness, over and above its already significant subsidized interest rate, is limited. Since ETF lowers the growth rate of the

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

CWSRF, and, therefore, its ability to provide future financing, the State Water Board has chosen to use ETF for limited purposes at this point. One of the key criteria that the State Water Board must demonstrate to U.S. EPA in its application to offer ETF is that it can maintain the program's long-term ability to provide financing. Staff recognizes the large infrastructure financing needs in California. The CWSRF is an important source of that financing, and, therefore, recommends that the Board balance the current financing needs with long-term financing needs statewide.

7. The financial security requirements are excessive and redundant. The package requires a resolution/ordinance from the governing body pledging revenue and funds for repayment and an opinion from bond counsel that the loan does not create a conflict with other debt financing. The Pledged Revenues and Funds (PRF) are significant, and should provide for repayment of the loan. Requiring a dedicated reserve or dedicated fund for loan repayment is redundant, and requires an excessive amount of financial and legal work on the part of the loan recipient. Any reference to a dedicated fund should be taken out. The local bond counsel and financial advisor will determine the best way to develop the PRF to assure repayment to satisfy the CWSRF.

The PRF resolution requires the applicant to identify the sources of funds it intends to use to repay and secure the loan subject to a lien and pledge against those sources comparable to the pledge a borrower would make through a bond indenture. The opinion from bond counsel as to the legal security of the pledged sources is comparable to a bond counsel opinion produced when a borrower participates in the municipal bond market. In most cases, borrowers will pledge their existing wastewater system revenues and authorize a lien on the relevant enterprise fund. Reserves, generally within the enterprise fund, may be required as a condition of financing as with other financing sources.

8. Sections a, b and d of the "Environmental Package" are necessary, but Section c seems to be obvious and redundant. If CEQA is needed, then compliance with CEQA and certification of the project under CEQA is obvious. Please review this section to determine if it can be condensed.

Division staff recommends that the text remain to ensure that applicants have a full understanding of the CWSRF environmental review requirements.

Dave Bruns

4/24/2013

[County Sanitation Districts of Los Angeles County \(CSDLAC\)](#)

1. Section IX.B.2.c.ii(C)(3) – "Volumetric Pricing and Water Metering" would require all applicants to certify compliance with water metering requirements outlined in the State Water Code. However, the Water Code Section cited specifically

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

states, “any urban water supplier that applies for financial assistance...shall demonstrate that the applicant meets the requirements of this section.”

Applicants should not be held responsible for implementing volumetric pricing or water metering requirements if they are not an urban water supplier. This section should be amended to read “All applicants who are urban water suppliers must certify compliance with the water metering requirements.”

The Technical Package of the application includes a one page self-certification form to help applicants meet this requirement. The form has two check boxes and a signature block. The first check box indicates that the applicant is not an urban water supplier, and, therefore, the volumetric pricing and water metering requirements are not applicable to the applicant. The second box indicates that the applicant is an urban water supplier, the pricing and metering requirement applies to the applicant, and the applicant has met the requirement. Therefore, applicants that are not urban water suppliers are only being asked to certify that the requirement is not applicable.

2. The draft Policy requires applicants to establish and maintain a restricted reserve, using its own cash, equal to one year’s debt service until the financing agreement is repaid. The Division can waive this under certain circumstances, but it is not clear whether that would extend to agencies for which a reserve would be a financial burden. Waiving the reserve for agencies with weak credit punishes agencies with good credit, and puts the CWSRF at greater risk. Agencies with poor credit and weak financials pose the greatest risk of default, and are the very agencies that should be required to maintain a debt service reserve. Thus, if absolutely necessary to maintain this section, there should be no waiver of the reserve requirement for agencies on the basis of financial hardship or poor credit rating.

Recently, the bond markets have decided that AA credits pose no substantive risk of default, and have eliminated the requirement for a debt service reserve, freeing up substantial capital to address water quality issues. The same standard should be applied to the CWSRF, and a reserve requirement should not be imposed on agencies with high credit ratings. If a reserve is necessary, the requirement that the applicant use its cash could be a deal breaker. The bond market allows borrowers to underwrite the reserve fund with bond proceeds, thereby spreading out the cost of the reserve. If absolutely necessary, agencies should be allowed to use the CWSRF program to fund it and repay it over the life of the loan. Requiring sound agencies to tie up significant funds in a reserve is unnecessary and prevents that money being used for water quality projects.

Section IX.B.4.b.i indicates that it is the Board’s expectation, but not a requirement, that a one-year reserve will normally be required unless the applicant’s credit, or tax considerations, support the Division recommending a different reserve level. The text was specifically written to recognize that a

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

reserve fund may not be necessary for applicants with stronger credits, and that a one-year reserve, or greater reserve in some cases, may be necessary for applicants with lower credit quality or higher risk projects. Staff believes the language provides the necessary flexibility to evaluate the credit of each applicant individually and determine an appropriate reserve level. Staff recommends that the text of this paragraph be modified to emphasize the Water Board's expectations regarding the need for a reserve fund. Staff has prepared a change sheet to show the suggested changes.

3. Many agencies have existing debt instruments with conditions that will make it impossible to implement the proposed position or coverage requirements in the draft Policy. Since existing CWSRF loan conditions prohibit future senior debt, there is no need to require all CWSRF loans to be at the senior level. The draft Policy requirement of 1.1X coverage for senior debt and 1.2X for total debt effectively means that any borrower with bonds and CWSRF loans will have to maintain coverages of 1.2X on both senior and total debt. This will translate to higher user rates to generate sufficient revenue. While the dollar impact may be minimal, it could complicate the Prop. 218, rate-setting process, and agencies may be inclined to opt out of the CWSRF program. There should be no requirement for CWSRF loans to be at the senior level; only that future debt cannot be senior to the CWSRF loan. Applicants should be required to have an additional bonds test related to the adoption of future rates. The Policy should continue the current coverage requirements of 1.2 for senior debt and 1.1 for total debt.

Section IX.B.4.c.i indicates that it is the Board's expectation, but not a requirement, that CWSRF loans be senior loans. Staff recommends that the text of this paragraph be modified to emphasize the Water Board's expectations regarding the status of a CWSRF loan relative to a borrower's other debts. Staff agrees that changing the existing debt coverage requirements may conflict with the existing debt instruments of some borrowers, and recommends retaining the debt coverage provisions in the existing Policy. Staff has prepared a change sheet to show the suggested changes.

4. The draft Policy eliminates the steps related to Facility Plan Approval (FPA) and Preliminary Funding Commitment (PFC). These two steps previously defined the date after which construction costs were eligible for financing. These sections continue this concept by calling out an effective date, prior to which construction costs are ineligible. Unfortunately, the draft Policy does not clearly define how the effective date is established. Having to wait until the program manager makes the determination on the financing agreement may compromise early construction and cause delays in meeting compliance schedules. Two dates should be defined: 1) the date when the state staff has finished its review of the technical documents and has issued a notification to the applicant of this fact, after which all construction costs are eligible for financing, and 2) the effective

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

date of the financing agreement establishes the date after which disbursements can be made. The applicant would also agree to assume the risk for any costs incurred between those dates if a financing agreement is never signed or if some of the costs are determined to be ineligible pursuant to Section IX.C.2.

The primary goal of the present Policy changes, as well as those made since 2008, is to streamline and shorten the financing process. Speeding up the application review and executing agreements sooner is the most effective way of avoiding the sort of uncertainty and stumbling blocks cited by the commenter.

The current process is for Water Board staff and management to review a complete application. The review culminates in a "Preliminary Funding Commitment," i.e., financing approval, typically by the Division's Deputy Director. After the Preliminary Funding Commitment, the Division prepares a financing agreement that is also routed for signatures, many of them individuals that signed off on the Preliminary Funding Commitment, and ultimately signed by the applicant and the Deputy Director. This second process results in an executed financing agreement. The Preliminary Funding Commitment date currently pinpoints when construction costs are eligible, and the financing agreement execution date determines when costs can be reimbursed.

The Policy changes recommended in the draft Policy amendment were based on the Division combining these two separate processes into one process. Instead of the Division sending the applicant a "Preliminary Funding Commitment," a document that indicates the Water Board's commitment to execute a future financing agreement, the Division will send the financing agreement to the applicant for signature and subsequent execution. As part of this new process, the Division will prepare the financing agreement. The date the Division prepares the financing agreement will pinpoint the date that construction costs are eligible (See Section XI.B.3 and Section IV.C.1). Both the dates when cost eligibility start and the financing agreement are executed will be accelerated by this change, and combining these two separate processes into one process will notably reduce application processing time. The date of cost eligibility will be contained in the financing agreement that the applicant will receive in place of receiving the current Preliminary Funding Commitment. Along with the additional process streamlining and application reorganization in the draft Policy amendment, Division staff hopes to significantly reduce the length of time it takes to finance CWSRF applications, thereby avoiding the delays and uncertainty noted by the commenter.

Staff recommends some edits to Section IV.C.1 to help clarify the date that cost eligibility begins, and has prepared a change sheet to show the recommended changes.

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

The Policy also gives staff the flexibility to execute an agreement with conditions, similar to the current Policy provisions allowing staff to execute an initial agreement with conditions for property access and adoption of rates. This will allow staff to execute an initial agreement for financing while the applicant resolves those outstanding issues. Applicants retain cost eligibility because they have an executed agreement, and the Division has a mechanism to ensure that key issues are resolved before disbursing construction funds to the applicant.

5. As indicated above, there have been significant delays in receiving financing approvals and agreements. This has resulted in application information (e.g., financial data, preliminary title reports, legal opinions) becoming “stale” or outdated. The consequence is that the CWSRF requests that the information be updated and the review process repeated. This causes applicants to incur additional costs – money that could be better spent on construction or operations. It is imperative that a streamlined review process be developed to avoid delays. One way to accomplish this is to maintain an active financial profile on each applicant that only needs to be updated and not fully reviewed each time a project application is submitted. We recommend that applicants be required to submit key financial information annually whether or not it has any pending CWSRF applications. Applicants should be required to notify the CWSRF of any material changes to its financial condition that could impact its ability to repay outstanding CWSRF loans.

Division staff agrees with the commenter’s recommendation to maintain an active financial profile of repeat borrowers. As reflected in Section IX.A.3 on page 17, the Division is reviewing its recordkeeping practices to reduce paperwork redundancy wherever possible to provide better service to repeat borrowers. The application reorganization is a major step that will assist the Division with maintaining general documents applicable to a repeat borrower so the Division can quickly complete its due diligence.

Raymond Chau

4/23/2013

Union San District

1. We agree with the SWRCB’s proposed streamlining and organization of the application package. It is easier to understand and follow. The application instructions are structured more as a checklist for applicants; this is good.

Staff acknowledges the comment.

2. In the Technical Package, if the applicant checks “No” to Question No. 1 under the Delta Plan, there should be “NA” boxes to check for Question Nos. 2 and 3. Checking “No” implies that the applicant did not fulfill the requirements. There are other examples of this elsewhere.

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

The application will be modified before being made live to reflect that Question Nos. 2 and 3 do not need to be answered if the answer to Question No. 1 is “no.” Staff will also conduct a final review of the application to identify and correct other similar examples.

3. The CWSRF has a “CEQA Plus” requirement for the CEQA process. Does the revised Environmental Package reflect those CEQA Plus requirements? Please clarify.

The Environmental Package reflects all of the environmental review requirements, federal and state, for CWSRF project applications.

4. Is a bond counsel required of all applicants? We have not used a bond counsel in previous applications. A clarification of when the bond counsel is necessary would be good.

A bond counsel legal opinion is only required where “the applicant has material bond debt.” If the applicant does not have any debt, other than outstanding CWSRF debt, a bond counsel opinion is not required.

5. The “soft costs” allowance tables are no longer used. Will there be limits put on what those “soft costs” can be or do we just put the actual amounts (if known) or our best estimate? Please clarify.

Applicants should put the actual soft costs, if known, or their best estimate of soft costs in their applications. The total financing costs will be limited by the credit of the applicant.

6. Will sole-sourced equipment be funded? Our staff occasionally sole source major pieces of equipment with our Board’s approval. Please clarify.

Applicants are required to certify that they have obtained all goods and services, including sole-sourced equipment, in compliance with applicable state laws.

7. The CWSRF needs to provide a schedule for the review of the application materials. We plan projects to be constructed during dry weather months so timely review and approval of the application is critical. We’ve had problems in the past with delaying our projects because the SRF applications were not approved. There needs to be some accountability on the CWSRF to provide timely reviews and approvals.

The primary goal of the present Policy changes, as well as those made since 2008, is to streamline and shorten the financing approval time. Division staff believes the recommended process and application changes will significantly

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

reduce application processing and approval time. Speeding up application approval and executing agreements sooner, is the most effective way of avoiding the sort of uncertainty and delays cited by the commenter. In addition, as reflected in Section IX.A.3, the Division is updating its recordkeeping to maintain an active profile of repeat borrowers. This will reduce paperwork redundancy. The application reorganization is a major step that will assist the Division with maintaining a profile on repeat borrowers, rather than the borrower having to resubmit the same documents with each application, and quickly completing its due diligence on a repeat borrower. In addition, the State Water Board regularly updates the "Application Status Report" (http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/forms/appstatusweb.pdf) so applicants can see where their applications are in the review process. Applicants may also contact their assigned Project Manager to receive updates on the status of their applications.

8. If the CWSRF re-prioritizes the projects in review, it needs to inform applicants of those projects that have been put on a lower priority and provide an explanation. It shouldn't be arbitrary.

All project applications will be prioritized according to the priority and sustainability points systems found in Section IV.A, when they are initially submitted. Staff does not foresee reprioritizing project applications later in the review process. Complete applications will be reviewed (per Section IV.A.5), consistent with the priority classes and number of sustainability points, before incomplete applications. If the CWSRF has insufficient funds for all projects with complete applications, the CWSRF will use the priority system and sustainability points, along with a community's disadvantaged status and climate change factors, to determine the order in which projects will be financed. The CWSRF regularly updates the "Application Status Report" (http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/forms/appstatusweb.pdf) so applicants can see where their applications are in the review process, and applicants may also contact the Project Manager assigned to each project application to receive updates on the status of their applications.

9. Will the SWRCB provide more streamlined and updated contract requirements that we can include in the contractor's bid documents? This would help tremendously in the implementation of the various requirements and enforcement during bidding and construction phases of projects.

The CWSRF provides guidance and documentation for Davis-Bacon and Disadvantaged Business Enterprise requirements, but no longer maintains general boilerplate for use in bidding documents. Maintaining such boilerplate is labor intensive, and with limited staffing the CWSRF determined that its limited resources were better used in administering the CWSRF program and providing financing to applicants. Engineers actively engaged in preparing plans and

Summary of Comments and Staff Responses
Amendment to the Clean Water State Revolving Fund Policy
Item #5; May 7, 2013 Board Meeting

specifications are in a better position to update and maintain boilerplate documents.

10. Please include some information on Single Audit, such as definition, triggers/requirements, etc. Providing timely draw reports (see attachment) every month or quarter would be helpful in our planning of hiring an accountant to conduct the audit. Informing us of the Single Audit requirement at the end of our fiscal year is very late for us. Here are a couple of concerns with the Single Audit:
- a. A qualified Single Audit opinion becomes public information, and could adversely affect an agency's credit rating.
 - b. A Single Audit requires internal resources, and adds time and expense to an agency's already-established budget.

The Single Audit provisions associated with the CWSRF program are federal requirements from the Office of Management and Budget (OMB). The specific provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502.), can be found in OMB Circular No. A-133. As a condition of receiving CWSRF financing, all applicants agree by signing their financing agreements to comply with the Single Audit requirements. The CWSRF sends a separate letter to the recipient after the agreement is executed notifying it of the Single Audit requirements and summarizing the requirements. The remittance advice sent with each disbursement includes the amount of federal funds in the disbursement. The CWSRF also provides each recipient with a year-end summary of federal dollars disbursed. It is the applicant's responsibility to evaluate the federal funds it receives during the year from all federally funded programs in which it participates to determine whether a federal Single Audit will be necessary because it received more than \$500,000 in federal funds during the year.