

OPERATING AGREEMENT
FOR ACTIVITIES AND FUNCTIONS
IN MANAGING THE
STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM
BETWEEN THE
STATE OF CALIFORNIA
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX

Revised

JUN 20 2002

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I. INTRODUCTION

A. PURPOSE

This State Revolving Fund Operating Agreement (OA) establishes a contractual relationship between The United States Environmental Protection Agency (EPA) and the State of California (State). The purpose of this agreement is to provide a framework for integrating guidelines and procedures to be followed by EPA and the State in administering the overall Clean Water State Revolving Fund (CWSRF) loan program as prescribed in Title VI of the Water Quality Act of 1987. In particular, the capitalization grant application, award and payment procedures, the CWSRF administrative and technical procedures to be implemented by the State, and the review, audit, and oversight procedures to be conducted by EPA are described in this agreement.

B. SCOPE

This agreement includes reference to the policies, procedures, and activities which will be used by the State of California and EPA in implementation of the Clean Water State Revolving Fund program.

This agreement provides information, describes processes, and records procedures that will continue from year to year. Information that changes from year-to-year or has not been incorporated in the OA shall be contained in the annual Application for Federal Assistance and Intended Use Plan (IUP).

The State intends to administer the program using applicable State and federal laws, policies and procedures adopted by the State Water Resources Control Board (SWRCB), and EPA regulations and policies. The State agrees that any modifications to this agreement which may be required by any future EPA regulations, policies or program guidance will be negotiated and implemented as quickly as possible.

C. DEFINITIONS

Annual Report means the report prepared pursuant to 33 USC § 1382 and 40 CFR § 35.3165.

Cash Draw means the transfer of funds from the U.S. Treasury to a designated State account, pursuant to a State request for such transfer, and in accordance with applicable rules for such transfer.

CEQA means the California Environmental Quality Act.

CIEDB means the California Infrastructure and Economic Development Bank, an entity within the California Technology, Trade and Commerce Agency, an agency of the State of California.

CWA means the Clean Water Act, which means the Federal Water Pollution Control Act (PL 92-500) as amended by the Clean Water Act of 1977 through the Water Quality Amendments, February 4, 1987 (PL 100-4).

CWSRF means the Clean Water State Revolving Fund Loan Program as established by Title VI of the Water Quality Amendments of 1987 (PL 100-4) to the Federal Water Pollution Control Act of 1972 and as described by the Initial Guidance, and all ancillary activities necessary to maintain an infrastructure to support program operations.

Disbursement or Cash Disbursement means payment by the State for costs incurred by the loan recipient for project construction.

EPA means the U.S. Environmental Protection Agency, Region IX and other federal offices and agencies with which EPA will coordinate various aspects of the program e.g., Department of Treasury.

Initial Guidance means the Initial Guidance for State Revolving Funds, January 1988, Office of Municipal Pollution Control (OMPC).

IUP means Intended Use Plan as described under Section 606(c), CWA and part IV.C (pp.20-23) of the Initial Guidance.

Payment means EPA action to increase the federal Automated Clearinghouse (ACH), or other Federal payment mechanism, as modified, ceiling amount pursuant to the "payment schedule" in the grant agreement.

POTW means publicly owned treatment works. Treatment works are defined under Section 212, CWA.

RA means EPA's Regional Administrator for Region IX.

Revenue Program is a formally documented determination of a user charge system developed by the recipient. It is designed to provide a source of revenue for operation, maintenance, and replacement (O. M. & R.) costs of the wastewater system that satisfies Federal and State requirements. In addition, debt service and revenue for establishing a capital reserve fund and an operating reserve fund may be collected by the system of charges based on actual use, or, if approved, by ad valorem taxes.

SERP means the State Environmental Review Process described in State Revolving Fund Program Implementation Regulations: 40 CFR Part 35.3140.

State means the SWRCB, its officers and staff, its agents, and other offices and agencies within State government with which the SWRCB will coordinate various program activities e.g., the State Controller's Office (SCO), which will issue checks to assistance recipients.

SWRCB means the State Water Resources Control Board.

WCRF means the Wastewater Capital Reserve Fund required to be created for expansion, major repair or replacement of the recipient's wastewater treatment facilities.

40 CFR Part 35 means the federal implementation regulations for the Clean Water State Revolving Fund program.

II. RESPONSIBILITIES

A. STATE

1. General

The State is responsible for administering the CWSRF program in conformance with federal and State laws and regulations; maintaining the assets of the fund in perpetuity; establishing a loan program for construction of wastewater treatment facilities, nonpoint source control and estuary protection programs; developing and implementing required rules and/or procedures (particularly those related to environmental review procedures and other federal requirements as provided in Title VI of the CWA); preparing required reports and CWSRF audits; providing timely and adequate staffing; and establishing interagency CWSRF coordinating mechanisms needed to effectively administer the CWSRF program.

2. Specific Responsibilities

a. Intended Use Plan (IUP)

The State will prepare a plan identifying the intended uses of the funds in the CWSRF and describing how those uses support the goals of the CWSRF. This IUP must be prepared annually. The primary purpose of the IUP is to

identify proposed annual intended uses of the funds available to the CWSRF. The IUP must be subjected to public comment and review before the capitalization grant agreement can be submitted to EPA. The IUP must contain a list of the projects from the State's adopted project Priority List for which the State expects to provide assistance.

b. CWSRF Management

The State will, subject to budget constraints, maintain a sufficient organization with adequate staff to reasonably assure that projects which receive funding will meet applicable standards and limitations, that loans are promptly repaid, and that fund assets are properly managed. Appendix 3 contains a chart of the Division of Clean Water Programs' current staffing for the CWSRF loan program. In addition, there is staff in the Division of Administrative Services, Office of Chief Counsel, the Division of Water Quality, and the Regional Water Boards that work on CWSRF projects and activities.

A Memorandum of Understanding between the Division of Clean Water Programs and the Division of Water Quality defining the respective roles of each Division in the management of the CWSRF program is included in Appendix 1K.

An Interagency Agreement between the SWRCB and the CIEDB was executed to develop a revenue bond program to leverage the CWSRF. A copy of this agreement is included in Appendix 1L.

CIEDB will serve as the issuer of the CWSRF bonds. The leveraging program will utilize a hybrid approach to permit the issuance of either "cashflow" or "reserve model" bonds in each series of financing. The initial financing will be a "cashflow" financing, with the CWSRF's current loans, funded with federal capitalization grants, state matching funds and other CWSRF funds which will secure the bonds, the proceeds of which will fund additional projects. Appendix 1M contains the "Flow of Funds" diagram and narrative of the financing model. Additional series may be similarly secured by loans funded from the CWSRF funds and bond proceeds, with an amount equal to the CWSRF's capitalization maintained in perpetuity. Under a "reserve model" financing, federal capitalization grants and state

match funds will be deposited into a debt service reserve fund pledged to bonds with interest earnings on the amounts in the reserve applied to provide the interest rate subsidy for the loans funded with bond proceeds. As either "cashflow" or "reserve model" bonds are repaid, CWSRF funds are available as security for repayment of other outstanding series and, if not so needed, will secure future bonds funding additional projects. The State will implement a leveraging program to provide additional financial assistance for projects.

c. Environmental Review

- (1) The State will conduct a "two tier" review of the potential environmental impacts on all projects receiving CWSRF assistance. The State intends to use the approved State Environmental Review Process SERP (tier 1) for conducting environmental reviews of projects in an amount equaling the capitalization grant [see Appendix 2, *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (in Appendix E)]. The State will review tier 2 projects in accordance with CEQA statutes (see Appendices 1D and 1E).
- (2) If the State plans to accept an Environmental Analysis Document (EAD) that was completed more than five years before the date the State plans to execute an assistance agreement for the project for which the EAD was prepared, the State will reevaluate the project's EAD and require that a public notice be issued explaining the results of the reevaluation. This applies to projects which meet the definition of treatment works under Section 212 of the CWA.
- (3) The State will assure the implementation of applicable federal environmental statutes and authorities. (Such statutes and authorities must be applied to all recipients of assistance provided by funds directly made available by federal capitalization grants, including those contained in the LIST OF FEDERAL LAWS AND AUTHORITIES in Appendix F of the EPA's SRF

Initial Guidance. The EPA will provide the State updates to this list with each capitalization grant.)

d. Coordination with Environmental Authorities

(1) The State will instruct all applicants undergoing tier 1 environmental review to send complete copies of their Draft Environmental Analysis Documents (EADs) directly to the SWRCB and to the State Clearinghouse. Draft Environmental Analysis Documents include:

- Environmental Impact Reports;
- Negative Declarations, including the Initial Study supporting the determinations; and
- Categorical Exemptions.

(2) The State will send copies of the EADs to Designated Agencies (DA) identified on EPA's Environmental Authorities Distribution List. The State will assure that each DA has at least forty-five (45) calendar days to review each Draft Environmental Analysis Document, except that this period will be thirty (30) calendar days for Draft Negative Declarations.

- The State will mail complete copies of Draft Environmental Analysis Documents to each DA on a certain date, with instructions to send the DA's comments to the State.
- The State will assure that the review period for its receipt of comments is at least fifty-one (51) calendar days from the date the State mailed the Draft Environmental Analysis Document to the DA (three days for transit by mail to the DA, plus 45 days for review, plus three days for transit by mail to the State). However, the DA shall have thirty-six (36) calendar days from the date the State mailed the Draft EAD to the DA to return comments to the State in the case of Draft Negative Declarations (three days for transit by mail to the DA, plus 30-

days for review, plus three days for transit by mail to the State).

- The State will routinely approve written requests from a DA for reasonable time extensions of the review period, if these requests are received within the 30-day or 45-day review period or any extension of a review period.
- The State will refer any time extension requests it intends to deny to the Water Management Division of EPA for arbitration.
- The State will seek concurrence from the U. S. Fish and Wildlife Service, or the National Marine Fisheries Service, in compliance with Section 7 of the Endangered Species Act, and concurrence and approval from the State Historic Preservation Officer in compliance with Section 106 of the National Historic Preservation Act. Concurrence should be in writing, when feasible, and EPA should be consulted if requests for concurrence are not acknowledged during the review period. Written concurrence from other DA's is not required.
- If no comments or time extension requests are received within the 30-day or 45-day review period, and the State's own review of the Draft EAD fails to identify any environmental issues, the State will proceed with the project.
- If a DA fails to comment, or request additional time for its review within the 30-day or 45day review period, the State will declare that the DA has waived its right to comment on the proposed project, unless an environmental issue pertinent to that agency's responsibilities is revealed by project construction.

e. Consultation with Environmental Authorities

- (1) For all projects undergoing tier 1 environmental review, the State will consult with each DA to determine the necessary and appropriate steps to be taken, whenever an environmental issue is:
 - Identified by the State's review of a draft EAD;
 - Described in the comments of a DA; or
 - Revealed by the project construction process.
- (2) Whenever the State and a DA (other than EPA) cannot quickly and easily resolve an issue:
 - The State will request assistance from EPA; and
 - EPA will assist in resolving the issue, and determine the mitigation measures or other steps that may be necessary or appropriate for the project in question.
- (3) The State will require applicants undergoing tier 1 environmental review to implement the mitigation measures or other steps, that have been determined as necessary or appropriate during the consultation process, through loan contract provisions or other CWSRF assistance agreement provisions.

f. Revenue Program Review

The State will conduct a review of a Revenue Program submitted by all applicants. The Revenue Program must demonstrate an adequate source of revenue for the operation, maintenance and replacement costs of the wastewater system that satisfies federal and State requirements. Where applicable, the following items will be considered when determining whether such an applicant's Revenue Program is acceptable.

- (1) Total operations and maintenance costs of the system.
- (2) Expected design flows and loadings.

- (3) Number and type of users.
- (4) Total average cost per household (including projected user charges) attributable to funding and operating the wastewater facilities (capital and operations and maintenance costs).
- (5) Median household income for the service area.
- (6) Population trends by looking at 10, and 20-year population projections.
- (7) Establishment of a local WCRF.

Revenue Programs that do not meet the federal and State requirements will be returned to the applicant for a reevaluation including additional investigations of lower cost alternatives to address the water quality or public health problem.

g. Credit Review.

The State will conduct a credit review of the ability of applicants to repay the debt service under the loan agreement. Credit reviews that provide insufficient evidence of the applicant's ability to repay the loan will be returned to the applicant for revision.

h. CWSRF Management

- (1) The State, upon receiving the capitalization grant, agrees to manage the CWSRF program in accordance with the requirements of Title VI of the CWA, the terms of this agreement, and applicable federal and State regulations and guidelines.
- (2) Responsibility for managing the CWSRF as set forth in this OA will not be subcontracted to private firms or other State or federal agencies without prior written approval from the Regional Administrator (RA) of EPA.
- (3) The State assures that a coordinated interagency program will be carried out. Appendices 1A and 1B contain the statutes creating the SWRCB and spelling out its powers and duties. Appendix 1C contains the statutes and codes which outline the fiscal duties and responsibilities of the State

Controller and Treasurer's Offices. A Memorandum of Understanding outlining the functional responsibilities of these two State agencies and the SWRCB is included in Appendix 1J with respect to general obligation bond funded State match. Legislation creating the CWSRF is contained in Chapter 6.5 (commencing with Section 13475), Division 7 of the Water Code. Appendix 3 contains a flow chart describing the step-by-step process for the review and decision making involved in the cycle of events from project selection to loan repayment for projects undergoing tier 1 environmental review.

i. Capitalization Grant Payment Procedures

- (1) Under the ACH payment system, the State will:
 - Initiate cash drawdowns only when actually needed for disbursements as costs are incurred;
 - Report cash disbursements and balances in a timely manner as required by the ACH Payment System Users Manual; and
 - Require secondary recipients to submit disbursement requests based on costs that have been incurred and are currently due and payable. Additional provisions are described in the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities."
- (2) The State will transmit payment (increase in the ACH ceiling) schedule change requests in writing to the EPA Project Officer for concurrence. Approved payment schedule changes will be transmitted by a memo of approval from the Project Officer to the EPA Grants Management Section for execution, and will be incorporated into the Capitalization Grant Agreement.
- (3) The State will provide to EPA an estimate of its cash draw needs by June 30 of each year for the following State fiscal year.

- (4) The State will credit to a dedicated CWSRF account or accounts, including those associated with bond issuance: (a) Each grant payment at the time it is made (A "grant payment" is defined as an increase to the amount the State may draw from the federal ACH ceiling established for the CWSRF program); (b) An amount equal to 20 percent of each grant payment on or before the date the State is scheduled to draw on the federal grant except with state match bonds proceeds that need to be deposited upon availability to the SWRCB; (c) All repayments of principal and interest on CWSRF loans or other forms of assistance; (d) All interest and investments earnings on cash balances in the fund; and (e) Revenue bond proceeds at time of issuance to be used for project disbursements and administrative costs, if applicable.

j. Accounting Requirements

The State has established an accounting system in accordance with the CWA Title VI requirements and all applicable federal regulations and policies regarding grants to states. The accounting system properly identifies State costs for operating the CWSRF program. A description of the accounting system is contained in Appendices 4A, 4A1 and 4B. Appendix 5 contains the fund account numbers established by the SCO.

k. Audit Requirements

The State will have an annual independent audit of the CWSRF and the operations of the CWSRF conducted. This audit will follow procedures specified in the General Accounting Office's Government Auditing Standards. The audit report will be completed within one year of the appropriate accounting period and will be submitted to the Regional Administrator, with a copy sent to EPA's OIG. EPA agrees to notify the State within 60-90 days as to the technical adequacy of the audit report and its findings.

l. File Maintenance

The State will receive and review project documentation from loan applicants. This documentation, together with the State's review memorandums and summary checklists, will be filed in an official project file maintained by the State.

The project files shall be made available to EPA upon request. Certain project file data will also be made available to EPA as needed in conjunction with rectifying erroneous outlay projections.

The State will retain the official project files, and will arrange for the storage of files for a period of three years after the loan has been fully amortized. Retention and ultimate disposition of all official project files shall be in accordance with State laws.

Public access to project records will be in accordance with the California Public Records Act. Access by the public will be in accordance with the U.S. Freedom of Information Act, PL 93-502.

The State will devise and institute measures which will alert its staff to potential project level problems as they emerge and which will set forth State actions to correct such problems as effectively as possible so as to preclude the need for corrective action by EPA.

B. EPA

1. General

EPA is responsible for evaluating State program activities and determining compliance with federal requirements.

2. Specific

a. Administration of the CWSRF

EPA will be responsible for determining whether, prior to awarding a capitalization grant, the State can and will meet the requirements necessary for administering the total program as set forth in Title VI of the CWA; for establishing ACH payments, consistent with the schedule derived from the State's IUP, which provides for disbursing CWSRF funds in accordance with project needs; for reviewing and approving applications for award of capitalization grants and for overseeing the State's administration of the CWSRF program.

b. CWSRF Payments

EPA agrees to provide funding through the awarding of capitalization grants to the State upon the joint acceptance

of this OA and approval of a completed grant application—in accordance with 40 CFR Part 35, and to make timely disbursements of grant funds in accordance with the jointly developed payment schedule and the outlay schedule prepared annually in conjunction with EPA's outlay submission to the federal Office of Management and Budget (OMB).

c. Noncompliance

If the annual review or audit reveals that the State has not complied with the terms of this agreement or other requirements under Title VI of the CWA, EPA will notify the State of such noncompliance, prescribe the necessary corrective measures and indicate follow-up actions to be taken, which may include on-site visits. Failure to satisfy the terms of the OA, including unmet assurances or invalid certifications, is grounds for a finding of noncompliance.

In addition, failure by the State to manage the CWSRF in a financially sound manner (e.g., allowance of consistent and substantial failures of loan repayments without appropriate action) will be grounds for a finding of noncompliance. In making a determination of noncompliance and devising the corrective action, EPA will identify the nature and cause of the problems in writing. The State's corrective action must remedy the specific instance of noncompliance and make necessary adjustments to avoid noncompliance in the future.

If, within 60 days of receipt of the noncompliance notice, the State fails to take the necessary actions or to provide an acceptable plan to achieve the results required, EPA shall withhold payments to the CWSRF until the State has taken acceptable actions. Once the State has taken corrective action satisfactory to the EPA, the withheld payments will be released and scheduled payments continued.

If the State fails to take acceptable corrective action within twelve months of receipt of the original notice, any withheld payments may be deobligated and reallocated to other states.

III. PROCEDURES

A. GENERAL

Upon the signing of this agreement by the Regional Administrator (RA) and the State, evidencing the State's willingness to, and capability to, administer the CWSRF program in accordance with the requirements of Title VI of the CWA and regulations issued pursuant thereto, the State may apply for a capitalization grant.

The laws establishing the State instrumentality for administering the CWSRF are contained in Appendices 1B and 1C. Also included in Appendix 1D is a copy of the California Environmental Quality Act (CEQA), which the State will use in addition to certain federal environmental requirements to conduct the approved State Environmental Review Process.

The method by which capitalization grants are deposited by EPA into the CWSRF and then transferred to loan recipients is described in detail in Appendix 4B.

The State will administer the CWSRF Loan Program in conformance with the CWA, EPA requirements, and the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities". This document outlines the methods and procedures, including project checklists, to be followed in administering the program in compliance with State and EPA requirements.

B. ADMINISTRATION

The State will provide the necessary staffing, hiring, training, etc. required to effectively administer the CWSRF program, including bond issuance. The State may use funds provided by Section 603 (d)(7) of the CWA, bond proceeds and annual fees, to the extent they are charged, to pay for program administration.

Although portions of Section 205(g) funds may be used to develop CWSRF programs, administrative funds under Title VI of the CWA will not be used to conduct Construction Grant Program activities. Costs of administering each of the programs (Construction Grant Program vs. CWSRF) will be documented and accounted for separately.

C. OVERVIEW AND COMPLIANCE

1. Annual Reports

The RA's formal review of the State's management of its CWSRF program will be through reviews of the State's Annual Report

which will be submitted no later than 90 days after the end of the state fiscal year and which will indicate the extent to which the goals and objectives as set forth in this agreement and in each previous year's IUP were met, or not met. The Annual Report will cover the timing of State matching deposits and binding commitments, provide year-end data on projects identified in the IUP, identify recipients of financial assistance and include dates of loans, existing and projected outlays, and other pertinent information. Similar information will also be included in the Annual Report for other forms of CWSRF financial assistance which may be implemented by the State. Information on such other forms of assistance will include dates of actions, terms, construction progress, and any other pertinent information. In addition, the Annual Report will address the State's progress in meeting enforceable requirements, and how the State's environmental reviews were carried out. Updated data from the IUP on planned versus actual events with annotations accounting for meeting first use requirements, accelerations, slippages, substitutions, etc., and other records pertaining to the State's performance in managing its facilities construction program, will form the basis for determining whether the State has met its objectives for the year. In addition, each Annual Report will address the recommendations of the previous year's reports.

2. Annual Program Evaluation

- a. Annually, the State will provide EPA with a specified set of project-level data as provided for in its Project Priority List, IUP and Annual Report submissions. Revisions of those few data elements which are subject to change, that is, estimated costs and dates, will be recorded as they occur during the year by the State but formally submitted to EPA only once each year as part of the State's Annual Report.
- b. As needed, EPA may contact the State for more detailed current information about a project or series of projects, or refer citizens with inquiries to the State. The State will provide appropriate needed information in a timely manner.
- c. Unanticipated requests for information are inevitable. Often, data will be needed to comply with requests from EPA Headquarters, Office of Management and Budget (OMB), and Congress. The State will maintain data systems designed to enable it to provide the information needed to respond to these requests in a timely manner.
- d. EPA agrees to provide the State with reasons for, and

details on, the requested data and reasonable amount of time to obtain same.

- e. To assure that data necessary to the management of the CWSRF program is available when and as needed, a data reporting system capable of reporting data in an EPA approved format will be maintained by the State.

3. Oversight Review

The oversight review will take into consideration alternative actions taken by the State to accommodate changes in the bond market; changes to meet emergency situations at the project level; adjustments in repayments in instances of default; etc., to the extent that these alternatives (or margins of error) were anticipated by the State and addressed in the IUP and Annual Report.

If, as a result of the oversight review, the State is determined by EPA to be in noncompliance with the terms of this agreement, the IUP or any other requirement of Title VI of the CWA, the RA will notify the State of the noncompliance and corrective action necessary. Corrective action procedures will be followed.

IV. ASSURANCES

The State will administer the CWSRF in conformance with the CWA, federal regulations promulgated pursuant thereto, other applicable federal regulations and requirements, and EPA policy.

If the RA determines that the capitalization grant funds or funds resulting from the capitalization grant were subject to waste, fraud or abuse by the State, the capitalization grant, or any appropriate part thereof, may be recovered under procedures outlined in 40 CFR Part 30. If any recipient of financial assistance from the State's CWSRF funds violates any contractual commitment, including violation of federal laws, rules or regulations, the State will take the appropriate remedial action.

Determinations by the RA involving any denial of an application for a capitalization grant as well as any dispute arising under a capitalization grant, including suspension or termination of grant assistance, will be final and conclusive unless appealed by the State within 30 days from the date of receipt of such final determination in accordance with the "Disputes" provisions of 40 CFR Part 31 Subpart L.

A. ADMINISTRATION

The State will assure, on an annual basis, that (1) legal remedies are available to the public to enforce implementation of the public review

provisions of the SERP, and (2) legal remedies are available to the State to enforce mitigation measures which have been established as a condition of providing CWSRF assistance to a project. The Attorney General's Certification concurring in the legal opinion of the Chief Counsel of the SWRCB and certifying that the SWRCB has the authority to bind itself to the terms of each agreement are included in Appendices 1G, 1H, and 1I.

B. PAYMENTS

The State will accept grant payments as scheduled in the grant agreement and amendments thereto.

C. STATE MATCH

1. Source of Match

- a. One source of the State match is proceeds from the sale of general obligation bonds.
- b. A second source of the State match is the 1984 Water Reclamation Account. State loan monies issued to construct water reclamation projects eligible under Sections 212 of the CWA have been and can be used for the State match. The State has taken necessary steps to place the reclamation account in the CWSRF. The monies in the reclamation account will be available in perpetuity for reloaning to future water reclamation projects.
- c. Another source of State match is cash proceeds from the Water Quality Control Fund Loan Program.
- d. Another source of State match is the loan program where local government pays the 20 percent State match in return for its local match loan.
- e. The State may, from time to time, identify other sources of State match. Such funds will not be used for State match until such time as their use has been approved by the EPA.

2. State Payment

- a. The State will pay an amount equal to 20% of the federal cash contribution on or before the date of each cash draw against the State's ACH ceiling amount for projects matched with proceeds from general obligation bond funds.
- b. Under the loan program described in C.1.d above, local government will pay the state match share of the eligible amount of the contractor's invoice to the contractor and then submit the request for loan disbursement to the Division. Local government recipients may also have the option to pay the contractor the full amount of the contractor's invoice until they have paid an amount equal to the state match portion of the loan amount. Additionally, local governments may choose to pay the entire 20 percent State match portion to the SWRCB with or prior to the first disbursement.
- c. For federal dollars matched using the Water Reclamation Account, Chapter 15 of the Porter-Cologne Water Quality Control Act sets out the requirements for implementation of the Water Reclamation Loan Program under the 1984 Clean Water Bond Law. Section 13999.10(d) of the Water Code states: "...all principal and interest from loans shall be returned to the Water Reclamation Account for new loans."

In accordance with this Section, when the Accounting Office remits loan principal and interest for Water Reclamation Loans to the 1984 Clean Water Bond Fund (Fund 740), the SCO automatically increases the budget authority in the Water Reclamation subaccount by the amount of the loan principal and interest payment. Appendix 5 contains a flow chart to track the movement of principal and interest repayments and the internal procedures describing the flow of funds for the Water Reclamation Account.

D. WATER RECLAMATION LOAN PROGRAM

All loans issued from the Water Reclamation Account are subject to restrictions outlined in 40 CFR Part 35.3100, contained in the Policy for Implementing The State Revolving Fund for Construction of Wastewater Treatment Facilities (CWSRF Policy), as amended by the SWRCB on June 18, 1998 (See Appendix 2) and any subsequent amendments, and in the Water Reclamation Loan Program Guidelines amended by the

SWRCB on April 17, 1997 (See Appendix C-1 of the CWSRF Policy for the reclamation guidelines) and any subsequent amendments.

E. BINDING COMMITMENTS

The State will make binding loan commitments, in the form of signed contracts to provide assistance, in an amount equal to 120% of each federal quarterly ACH increase within one year of that quarterly increase amount.

F. EXPEDITIOUS EXPENDITURE

The State will "expend" funds in the fund "in an expeditious and timely manner".

G. FIRST USE

1. State Requirement

The State will first use the assets of the CWSRF to assist local agencies with facilities on the National Municipal Policy (NMP) list which do not meet any of the criteria under part III.B.5. (pp. 11-12) of EPA's "SRF Initial Guidance for State Revolving Funds."

2. State Certification

In any year that the State plans to assist projects other than those on the non-compliance portion of the NMP list, the IUP for that year will include a certification that the first use requirements have been met.

H. PRE-AWARD COMPLIANCE REVIEW REPORT

The State will assure that recipients of CWSRF assistance provide a completed Preaward Compliance Review Report, EPA Form 4700-4 (REV. 11-86), for approval, prior to the award of CWSRF assistance. In the event a recipient requests an increase in the amount of funding because of a change in project scope related to a change in the population to be served by the project, an updated Preaward Compliance Review Report will be required of the assistance recipient.

I. STATE LAWS

The State will administer the CWSRF in conformance with applicable State laws and procedures.

J. ACCOUNTING AND AUDIT PROCEDURES

The State will comply with the provisions of OMB Circular A-128 governing the audit of federal financial assistance to the state, local governments, and Indian tribes. Audit reports will be prepared and transmitted in accordance with paragraph 13 of the Circular. The audit report copy for EPA will be sent to: EPA, Office of the Inspector General, Western Division, 75 Hawthorne street, San Francisco, CA 94105.

The State will establish and maintain fiscal controls and accounting procedures in conformance with generally accepted accounting principles.

K. ANNUAL REPORT

The State will prepare and transmit to EPA an Annual Report as described in 40 CFR Part 35.3165.

L. ENVIRONMENTAL REVIEW

The State will conduct a "tier 1" environmental review of each applicant receiving assistance in an amount equal to the capitalization grant in accordance with the approved SERP. A "tier 2" review consisting of meeting the requirements of the CEQA (See Appendices 1D, 1E, and 1F) will be used for other eligible projects.

M. APPLICATION OF OTHER FEDERAL AUTHORITIES

The State will comply, and assure compliance by its agents and recipients of CWSRF assistance, with applicable federal statutes including those identified in Appendix F of EPA's "SRF Initial Guidance for the State Revolving Fund." EPA will update this list of federal statutes with each capitalization grant.

N. EPA PROGRAM REVIEW

The State will cooperate with and assist in the EPA program audits and evaluations conducted pursuant to Sections 606(b) and (e), CWA.

O. PREVENTION OF DOUBLE BENEFITS [see Section 603(e) CWA]

The State will require the recipient of CWSRF assistance to repay any loan made from the CWSRF "to finance the cost of facility planning and the preparation of plans, specifications and estimates" for construction of a POTW, if the project received a grant under Section 201(g), CWA, which included an allowance for planning and design costs under Section 201(1)(1), CWA. Such repayment must be obtained from the CWSRF recipient within 30 days of notification of the occurrence.

P. CONSISTENCY WITH PLANNING REQUIREMENTS [see Section 603(f), CWA]

The State will not provide assistance from the CWSRF to projects which are inconsistent with plans which have been developed under Sections 205(j), 208, 303(e), 319 and 320, CWA.

Q. ELIGIBILITY OF NON-FEDERAL SHARE OF CONSTRUCTION GRANT PROJECTS [see Section 603(h), CWA]

1. Non-Federal Share

The State will not provide a loan from the CWSRF to finance the non-federal share of the cost of a "treatment works project", which has received a federal grant under Section 201(g), CWA.

2. Limitation on CWSRF Loans

The State may provide other forms of CWSRF financial assistance, such as loan guarantees and insurance, to finance the non-federal share of the cost of a grant funded "treatment works project" only if such CWSRF assistance "is necessary to allow the project to proceed". The State will maintain documentation of the basis for such a determination in the project file.

R. MINORITY BUSINESS ENTERPRISE/WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) COMPLIANCE

The State will assure that all CWSRF assistance awarded under this Agreement comply with the MBE/WBE program objectives. Progress under the assistance awards shall count toward meeting the State commitment. The State also agrees to transmit to the EPA's MBE/WBE coordinator, a completed EPA Form 334 (MBE/WBE Utilization Report) within 30 days after the end of each federal fiscal quarter during which the State or its subrecipients award any assistance awards.

S. RECORDS MAINTENANCE

1. Maintenance Period

The State will retain official project files in its offices for one year after the final payment from the State to the loan recipient is made.

2. Storage Period

The State will arrange for the storage of project files for a period of three years after the loan has been fully amortized.

T. CONGRESSIONAL AND PUBLIC INQUIRIES

Responses to Congressional and public inquiries will be made by the State and, as necessary, coordinated with EPA. A copy of the response, with a copy of the inquiry will be sent to EPA as appropriate. It is recognized that certain CWSRF program inquiries will be directed to EPA, and EPA will be responsible for the response. When this occurs, the State agrees to provide, in a timely manner, background information needed to prepare such responses. (Procedures for managing inquiries are contained in Appendix 6.) If EPA responds, EPA will send a copy of the response to the State project manager for the official project file.

U. FREEDOM OF INFORMATION ACT

Appendix 6 contains the procedures used by the State to handle FOIA requests. The State also agrees to work with EPA to handle all federal FOIA requests in an expeditious manner.

V. AGREEMENT

A. AMENDING THE OPERATING AGREEMENT

This Operating Agreement may be amended at any time by mutual agreement between the parties. Federal increases or decreases to the CWSRF can only be made through a capitalization grant amendment.

Designated Signatories

a. Amending the Agreement

The following officials are authorized to effect program changes (items significantly altering the Operating Agreement):

(a.1.) For the State:

Executive Director
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812

(a.2.) For the EPA:

Regional Administrator or Designated Grant Award Official
United States Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

b. Other Changes

Items not altering the Operating Agreement, but involving changing implementation or review procedures may be implemented through the agreement of:

(b.1.) For the State:

Division Chief
Division of Clean Water Programs
State Water Resources Control Board
P. O. Box 944212
Sacramento, CA 94244

(b.2.) For the EPA:

EPA Project Officer
Water Division
75 Hawthorne Street
San Francisco, CA 94105

B. EXECUTION

This amended Operating Agreement will be effective commencing on JUN 20 2002


for Alexis Strauss

Grant Award Official
U.S. Environmental
Protection
Agency, Region IX

Date 6/20/02



Executive Director, State
Water Resources Control
Board

Date 6-19-02