

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
MARCH 17, 2009**

ITEM 13

SUBJECT

CONSIDERATION OF A RESOLUTION TO IMPLEMENT FEDERAL ECONOMIC RECOVERY LEGISLATION FOR THE CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM

DISCUSSION

California's and the nation's economy are in a significant recession. The American Recovery and Reinvestment Act (ARRA) of 2009 provides a combination of tax and spending measures designed to create jobs, stimulate economic recovery, and invest in technology and infrastructure for long-term economic benefit. The CWSRF Program will receive a significant injection of capital from ARRA that must be committed quickly to eligible projects.

ARRA gives priority to projects that are ready to proceed to construction within 12 months of enactment, and sets a goal of using at least 50 percent of funds for projects that start construction within 120 days of enactment. The United States Environmental Protection Agency (U.S. EPA) guidance requires that projects receiving ARRA funds be under contract to construct one year (on or before February 16, 2010) after ARRA's enactment. If ARRA funds are not committed to projects under construction one year after enactment, those funds will be reallocated to other states that can use the funds. Recipients of ARRA funds are expected to use them in a manner that maximizes job creation and economic benefit. ARRA requires that the CWSRF Program use at least 50 percent of the funds for principal forgiveness, negative interest rates, grants, or any combination of these (subsidy funds). Twenty (20) percent of ARRA funds must be used as subsidy funds, to the extent that there are eligible applications, for "green infrastructure, water or energy efficiency improvements, and other environmentally innovative activities" (innovation and efficiency projects). U.S. EPA guidance indicates that ARRA funds are available to an applicant if the initial debt agreement is executed on or after October 1, 2008.

The Division of Financial Assistance (Division) administers the CWSRF Program to finance publicly owned treatment facilities, non-point source (NPS) projects and programs, and estuary comprehensive conservation and management plans. ARRA funds are available for these projects, but may not be used to purchase land or easements.

The State Water Resources Control Board (State Water Board) recently amended the *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (CWSRF Policy). The State Water Board should take several actions to implement the CWSRF Policy changes to strengthen the program and implement ARRA in a way that maximizes the benefit to California's infrastructure and water quality needs, particularly for disadvantaged communities.

Remove Ceiling on Yearly Disbursements

Currently the State Water Board limits the amount an agency can draw from the CWSRF Program to \$50 million per year in most cases. The Deputy Director of the Division has discretion to exceed this limit as long as it will not hinder the ability of other applicants to receive financing. The intent of this limitation is to ensure that funds are fairly distributed to a range of applicants. ARRA will provide approximately \$270 million in extra cash for local assistance and require that California commit these funds quickly. Given this large infusion of additional capital and the short deadline, it is unnecessary and counterproductive to limit disbursements. Division staff recommends that the State Water Board eliminate the disbursement ceiling, but continue to require the Deputy Director of the Division to evaluate the effect that large projects will have on the ability of other applicants to receive financing and limit commitments to large projects if appropriate. Division staff will evaluate the need for a disbursement ceiling and recommend whether the ceiling should be reinstated in the future.

Discontinue Option that Allows Applicants to Provide Funds to Match Federal Grants; Reevaluate Option Yearly

Federal regulations require the CWSRF Program to provide one dollar for every five dollars in federal capitalization grants. Applicants can choose to help the CWSRF Program meet this requirement by selecting the match financing option. Applicants provide funds as part of financing their projects that can be used by the CWSRF Program to match federal grants. In return, the applicants receive financing at a nominal interest rate of zero (0) percent (an effective interest rate of 1.8 percent). At the end of State Fiscal Year 2007-2008, an extra \$194 million in state and local funds were contributed to the CWSRF Program to match federal capitalization grants. This is sufficient to match nearly \$1 billion in federal capitalization grants. Recent capitalization grants have been approximately \$50 million per year. ARRA does not require the CWSRF Program to provide matching funds; the ARRA capitalization grant will be 100 percent federal dollars. Division staff recommends that the State Water Board discontinue offering the match financing option because the CWSRF Program has excess matching funds and this subsidy should be redirected to better uses. Applicants that submitted an application as of the date of this resolution should be allowed to select the match financing option if they so choose. Division staff will evaluate whether the CWSRF Program needs to offer the match financing option in the future to meet the federal matching requirement and recommend, per the CWSRF Policy amendment, whether the match financing option should be offered yearly.

Suspend Over-Reporting of Federal "Cross-Cutters"; Reevaluate Reporting Requirement Yearly

Federal regulations require that the Board show that projects funded by the CWSRF Program comply with certain federal laws (known as "federal cross-cutters") in an amount equal to the federal grants to the Program. (Note that the Board must show that all projects receiving funding through the CWSRF Program comply with a subset of federal laws known as "super cross-cutters.") Through September 2008, the Division demonstrated compliance with "federal cross-cutters" on all projects seeking funding under the CWSRF Policy, or about \$4.0 billion in financing done by the CWSRF Program. During the same period, the CWSRF Program received about \$1.9 billion in grants from U.S. EPA. Therefore, the CWSRF Program can discontinue showing compliance with "federal cross-cutters" temporarily. Division staff recommends that the State Water Board suspend reviewing projects for compliance with "federal cross-cutters;" staff will evaluate the need for demonstrating compliance with cross-cutters in the future and recommend, per the CWSRF Policy amendment, whether to reinstate application of the federal cross-cutter rule yearly.

ARRA Funds

The Division recommends that the State Water Board establish the following primary guidelines for staff to follow so that California can receive the most water quality benefits and still meet ARRA requirements.

- 50 percent of ARRA funds should be used as subsidy funds.
- ARRA funds should be reserved for State Water Board priorities, beyond those specified in ARRA, only for a limited period of time.
- ARRA funds should be distributed as fairly as possible.
- Small, disadvantaged communities (<20,000 population and <80 percent of statewide median household income (MHI)) should receive priority for subsidy funds over other communities, if subsidy funds become limited.
- Projects with earlier construction start dates should receive priority for subsidy funds before projects with later construction start dates, if subsidy funds become limited.

The Division recommends that the State Water Board establish a timeline by which ARRA subsidy funds will be distributed. ARRA funds should be reserved for disadvantaged communities and state grant funded projects in the following amounts under the following conditions:

Subsidy Funds by Category of Applicant

Category	Subsidy Per Project	Conditions
Community MHI < 80 percent of statewide MHI. (25% ARRA)	<ul style="list-style-type: none"> ▪ Maximum: The lesser of 50 percent of project cost or \$10 million. ▪ Minimum: The lesser of \$3 million or 100 Percent of project costs. ▪ Notwithstanding the Maximum and Minimums above, a community may receive enough subsidy to reduce service charges or implementation costs to 1.5 percent of MHI, but shall not receive more than is needed to reduce service charges or implementation costs to less than 1.5 percent of MHI. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Complete application must be received by the Division and the financing agreement must be executed or executable before September 1, 2009. ▪ Complete Approval of Award (AOA) request must be received by the Division before January 1, 2010. ▪ Copy of executed construction contract must be received by the Division before February 1, 2010.
Projects that lost previously committed state grant funding. (25% ARRA)	<ul style="list-style-type: none"> ▪ Maximum: \$5 million. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF and ARRA eligibility requirements. ▪ Projects must have an executed grant agreement that was suspended and an executed construction contract or proof of project initiation received by the Division before May 17, 2009. ▪ In addition to the primary guidelines above, priority for subsidy projects may be determined by the Executive Director consistent with established State Water Board guidance.

After May 16, 2009, ARRA subsidy funds not committed to projects that lost previously committed state grant funding should become available to communities with MHIs less than 80 percent of the statewide MHI. After August 31, 2009, ARRA subsidy funds not committed to communities with MHIs less than 80 percent of the statewide MHI, or projects that lost previously committed state grant funding should become available for distribution to all eligible applicants. The Executive Director should determine, after public review, how much subsidy funds remain uncommitted after August 31, 2009, and distribute those funds as fairly as possible to all applicants with submitted AOA requests before January 1, 2010, and submitted copies of executed construction contracts before February 1, 2010. Any applicant with an executed debt obligation after October 1, 2008 should be eligible for any remaining subsidy funds distributed in this manner. This will motivate all other applicants to execute their financing agreements as early as possible so they are in the best position to receive uncommitted subsidy funds.

Division staff also recommends that the Executive Director, or designee, of the State Water Board have discretion to modify the amount of subsidy funds a project may receive if it will ensure a reasonable implementation of ARRA. The Executive Director, or designee, should only take such action after any prospective recipient, adversely affected by the action, has an opportunity to comment on the proposed action. The Executive Director, or designee, exercising this authority, without restricting their authority, should update the Board Members and the public at Board Meetings, or by other appropriate communication, on the progress of implementing ARRA and recommend appropriate adjustments to the implementation plan or other changes in policy or procedure necessary to achieve the most favorable result for water quality in California.

Reduced Interest Financing

Assembly Bill AB 1742 (Chapter 632, Statutes of 2007) authorized the State Water Board to establish interest rates for CWSRF agreements not to exceed one-half of the California general obligation (GO) bond rate. In the interest of promoting federal economic recovery efforts and committing the program's normal cash flow, the Division recommends that the State Water Board offer reduced interest rates for innovation and efficiency projects as well as all other financing not eligible for other incentives or subsidies, according to the following schedule:

Interest Rate Incentives by Category of Applicant

Category	Interest Rate	Conditions
Innovation and efficiency projects	Zero (0) Percent	<ul style="list-style-type: none"> ▪ Up to a total of \$60 million in cumulative financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before July 18, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.
All projects	One (1) Percent	<ul style="list-style-type: none"> ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.

U.S. EPA guidance on implementing ARRA includes guidance on innovation and efficiency projects. In order for projects to be eligible for subsidy funds for innovation and efficiency efforts, the Division recommends that they should substantially meet U.S. EPA's final guidance for innovation and efficiency projects ([Attachment A is U.S. EPA's draft guidance](#)), or be eligible if they will achieve a goal or substantially meet a target or guidance established through a public process or established by a state or national entity that regulates or represents innovation or efficiency interests and be consistent with the existing CWSRF Program eligibility criteria.

POLICY ISSUE

Should the State Water Board:

1. Eliminate the per agency disbursement ceiling until further notice, but continue to require the Deputy Director of the Division to evaluate, and limit if appropriate, the effect of large projects on the ability of other applicants to receive financing?
2. Discontinue the match financing option until further notice? Should applicants that have submitted an application as of the date of this resolution be allowed to select match financing?
3. Find that the CWSRF Program has shown compliance with "federal cross-cutters" in excess of what is needed to comply with federal regulations for the foreseeable future and allow the Division to discontinue application of the cross-cutter rule until further notice?
4. Establish the following primary guidelines for staff to follow while implementing the ARRA funds for California?
 - 50 percent of ARRA funds should be used as subsidy funds.
 - ARRA funds should be reserved for State Water Board priorities, beyond those specified in ARRA, only for a limited period of time.
 - ARRA funds should be distributed as fairly as possible.
 - Small, disadvantaged communities (<20,000 population and <80 percent of statewide MHI) should receive priority for subsidy funds over other communities if subsidy funds become limited.
 - Projects with earlier construction start dates should receive priority for subsidy funds before projects with later construction start dates if subsidy funds become limited.
5. Reserve ARRA subsidy funds for categories of applicants according to the following schedule and limitations:

Subsidy Funds by Category of Applicant

Category	Subsidy Per Project	Conditions
<p>Community MHI < 80 percent of statewide MHI. (25% ARRA)</p>	<ul style="list-style-type: none"> ▪ Maximum: The lesser of 50 percent of Project cost or \$10 million. ▪ Minimum: The lesser of \$3 million or 100 percent of project costs. ▪ Notwithstanding the Maximum and Minimums above, a community may receive enough subsidy to reduce service charges or implementation costs to 1.5 percent of MHI, but shall not receive more than is needed to reduce service charges or implementation costs to less than 1.5 percent of MHI. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of executed construction contract must be received by the Division before February 1, 2010.
<p>Projects that lost previously committed state grant funding. (25% ARRA)</p>	<ul style="list-style-type: none"> ▪ Maximum: \$5 million. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF Program and ARRA eligibility requirements. ▪ Projects must have an executed grant agreement that was suspended and an executed construction contract or proof of project initiation received by the Division before May 17, 2009. ▪ In addition to the primary guidelines above, priority for subsidy projects may be determined by the Executive Director consistent with established State Water Board guidance.

6. Make ARRA subsidy funds that are not committed to projects that lost previously committed state grant funding available to communities with MHIs less than 80 percent of statewide MHI starting May 17, 2009? Make ARRA subsidy funds that are not committed to communities with MHIs less than 80 percent of statewide MHI or projects that lost previously committed state grant funding available for distribution to all eligible applicants starting September 1, 2009? Delegate to the Executive Director the responsibility to determine, after public review, how much subsidy funds remain uncommitted after August 31, 2009, and the authority to distribute those funds as fairly as possible to all eligible applicants that submitted an AOA request before January 1, 2010, and submitted copies of an executed construction contract before February 1, 2010? Determine that any applicant with an executed debt obligation after October 1, 2008, is eligible for any remaining subsidy funds distributed in this manner?

7. Delegate authority to the Executive Director, or designee, to modify the amount of subsidy a project may receive if it will ensure a reasonable implementation of ARRA provided the Executive Director, or designee, only takes such action after any prospective recipient, adversely affected by the action, has an opportunity to comment on the proposed action with the caveat that the Executive Director or designee, without restricting their authority, should update the Board Members and the public at Board Meetings, or by other appropriate communication, on the progress of implementing ARRA and recommend appropriate adjustments to the implementation plan or other changes in policy or procedure necessary to achieve the most favorable result for water quality in California?
8. Offer reduced interest rates for innovation and efficiency projects as well as all other financing not eligible for other incentives or subsidies, according to the following schedule?

Interest Rate Incentives by Category of Applicant

Category	Interest Rate	Conditions
Innovation and efficiency projects	Zero (0) Percent	<ul style="list-style-type: none"> ▪ Up to a total of \$60 million in cumulative financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before July 18, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.
All projects	One (1) Percent	<ul style="list-style-type: none"> ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.

9. Determine that innovation and efficiency projects are those that substantially meet U.S. EPA final guidance (Attachment A is U.S. EPA's draft guidance) for innovation and efficiency projects, projects that will achieve a goal or substantially meet a target, or guidance established through a public process or established by a state or national entity that regulates or represents innovation or efficiency interests, and are consistent with the existing CWSRF Program eligibility criteria?

FISCAL IMPACT

Eliminating the per agency disbursement cap will increase cash disbursements from the CWSRF Program. Division staff closely monitors CWSRF Program cash, and calculates the effect each project will have on the CWSRF Program cash flow before deciding to fund a project. The additional capitalization funds from U.S. EPA will provide ample cash for the foreseeable future. The available cash over the next four years, including ARRA funds, is approximately \$800 million according to current cash flow projections as seen in the table below. Providing approximately \$140 million in subsidy funds will leave approximately \$650 million for loan financing over the next four years.

CWSRF Project Four Year Cash Flow Projection

(as of 2/13/2009)	SFY 2008-09	SFY 2009-10	SFY 2010-11	SFY 2011-12
Beginning Balance:	\$291,830,366	\$390,457,317	\$432,944,574	\$611,850,071
Estimated Repayments	\$201,056,084	\$217,216,222	\$227,216,222	\$237,216,222
Debt Service on Revenue Bonds	(\$31,893,104)	(\$31,758,441)	(\$31,456,429)	(\$30,228,204)
Estimated Capitalization Grants (less admin)	\$46,965,399	\$18,122,720	\$37,000,000	\$32,000,000
Economic Stimulus Grant (less admin)	\$270,518,910			
State G.O. Bond proceeds (less state admin. match)	\$13,414,123	\$0	\$0	\$0
Local Match Credits	\$13,292,655	\$2,212,835	\$760,015	\$666,280
Est. SMIF Interest:	\$10,574,552	\$10,000,000	\$8,000,000	\$6,000,000
Estimated Disbursements	(\$425,301,668)	(\$173,306,079)	(\$62,614,311)	(\$15,678,557)
Subtotal	\$390,457,317	\$432,944,574	\$611,850,071	\$841,825,812

Discontinuing the match financing option will generate additional earnings in the future due to the higher effective interest rate of standard financing agreements. The additional earnings will offset the reduced earnings associated with lower interest rates for disadvantaged communities, other borrower incentives, and the Small Communities Grant fund established by AB 2356.

The subsidy funds from the economic recovery legislation will not affect future earnings for the CWSRF Program.

Offering reduced interest rates on loan financing will reduce earnings on those funds.

The economic recovery legislation provides up to four percent of the grant for state administrative costs. This will be sufficient to fund the necessary positions to implement the additional economic recovery legislation.

REGIONAL BOARD IMPACT

Implementation of the CWSRF Policy options to address ARRA will support implementation of Regional Board's basin plans and enforcement efforts.

STAFF RECOMMENDATION

The State Water Board should:

1. Eliminate the per agency disbursement ceiling until further notice, but continue to require the Deputy Director of the Division to evaluate, and limit if appropriate, the effect of large projects on the ability of other applicants to receive financing;

2. Discontinue match financing until further notice, but allow applicants that have submitted an application as of the date of this resolution to select match financing;
3. Find that the CWSRF Program has shown compliance with “federal cross-cutters” in excess of what is needed to comply with federal regulations for the foreseeable future and allow the Division to discontinue application of the “federal cross-cutter” rule until further notice;
4. Establish the following primary guidelines for staff to follow while implementing the ARRA funds for California;
 - 50 percent of ARRA funds should be used as subsidy funds.
 - ARRA funds should be reserved for State Water Board priorities, beyond those specified in ARRA, only for a limited period of time.
 - ARRA funds should be distributed as fairly as possible.
 - Small, disadvantaged communities (<20,000 population and <80 percent of statewide median household income) should receive priority for subsidy funds over other communities, if subsidy funds become limited.
 - Projects with earlier construction start dates, should receive priority for subsidy funds before projects with later construction start dates if subsidy funds become limited.
5. Reserve ARRA subsidy funds for categories of applicants according to the following schedule and limitations;

Subsidy Funds by Category of Applicant

Category	Subsidy Per Project	Conditions
Community MHI < 80 percent of statewide MHI. (25% ARRA)	<ul style="list-style-type: none"> ▪ Maximum: The lesser of 50 percent of project cost or \$10 million. ▪ Minimum: The lesser of \$3 million or 100 percent of project costs. ▪ Notwithstanding the Maximum and Minimums above, a community may receive enough subsidy to reduce service charges or implementation costs to 1.5 percent of MHI, but shall not receive more than is needed to reduce service charges or implementation costs to less than 1.5 percent of MHI. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of executed construction contract must be received by the Division before February 1, 2010.
Projects that lost previously committed state grant funding. (25% ARRA)	<ul style="list-style-type: none"> ▪ Maximum: \$5 million. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF Program and ARRA eligibility requirements. ▪ Projects must have an executed grant agreement that was suspended and an executed construction contract or proof of project initiation received by the Division before May 17, 2009.

Category	Subsidy Per Project	Conditions
		<ul style="list-style-type: none"> ▪ In addition to the primary guidelines above, priority for subsidy projects may be determined by the Executive Director consistent with established State Water Board guidance.

6. Make ARRA subsidy funds that are not committed to projects that lost previously committed state grant funding available to communities with MHIs less than 80 percent of the statewide MHI starting May 17, 2009. Make ARRA subsidy funds that are not committed to communities with MHIs less than 80 percent of statewide MHI or projects that lost previously committed state grant funding available for distribution to all eligible applicants starting September 1, 2009. Delegate to the Executive Director the responsibility to determine, after public review, how much subsidy funds remain uncommitted after August 31, 2009, and the authority to distribute those funds as fairly as possible to all eligible applicants that submitted an AOA request before January 1, 2010, and submitted copies of an executed construction contract before February 1, 2010. Determine that any applicant with an executed debt obligation after October 1, 2008, is eligible for any remaining subsidy funds distributed in this manner;
7. Delegate authority to the Executive Director, or designee, to modify the amount of subsidy a project may receive if it will ensure a reasonable implementation of ARRA provided the Executive Director, or designee, only takes such action after any prospective recipient, adversely affected by the action, has an opportunity to comment on the proposed action with the caveat that the Executive Director or designee, without restricting their authority, should update the Board Members and the public at Board Meetings, or by other appropriate communication, on the progress of implementing ARRA and recommend appropriate adjustments to the implementation plan or other changes in policy or procedure necessary to achieve the most favorable result for water quality in California;
8. Offer reduced interest rates for innovation and efficiency projects as well as all other financing not eligible for other incentives or subsidies according to the following schedule; and

Interest Rate Incentives by Category of Applicant

Category	Interest Rate	Conditions
Innovation and efficiency projects	Zero (0) Percent	<ul style="list-style-type: none"> ▪ Up to a total of \$60 million in cumulative financing. ▪ Complete application must be received by the Division and the financing agreement must be executed or be executable before July 18, 2009. ▪ Complete AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.
All projects	One (1) Percent	<ul style="list-style-type: none"> ▪ Complete application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Complete AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.

9. Determine that innovation and efficiency projects are those that substantially meet US EPA's final guidance (Attachment A is U.S. EPA's draft guidance) for innovation and efficiency projects or projects that will achieve a goal or substantially meet a target or guidance established through a public process or established by a state or national entity that regulates or represents innovation or efficiency interests, and are consistent with the existing CWSRF eligibility criteria.

State Water Board action on this item will assist the Water Boards in reaching Goal 2, 4, 5 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030; comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes; improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, by enhancing and improving accessibility of data and information, and by encouraging the creation of organizations or cooperative agreements that advance this goal, such as establishment of a statewide water data institute.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

IMPLEMENT FEDERAL ECONOMIC RECOVERY LEGISLATION FOR THE CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM

WHEREAS:

1. The Division of Financial Assistance (Division) administers the CWSRF Program to finance publicly-owned treatment facilities, non-point source (NPS) projects and programs, and estuary comprehensive conservation and management plans;
2. The *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (CWSRF Policy) was originally adopted by the State Water Resources Control Board (State Water Board) on August 18, 1988, and recently amended;
3. The CWSRF Program has shown compliance with “federal cross-cutters” in excess of what is needed to comply with federal regulations for the foreseeable future;
4. The American Recovery and Reinvestment Act (ARRA) of 2009 will provide approximately \$270 million to the CWSRF Program for local assistance that must be committed quickly to eligible projects;
5. CWSRF Policy actions by the State Water Board are necessary to implement ARRA to maximize the benefits to California’s infrastructure and water quality needs, particularly for disadvantaged communities and projects that lost previously committed state grant funding;
6. Federal law requires that economic recovery money be expended according to the following rules:
 - Funds must be committed to projects that will be under contract for construction by February 17, 2010, or else The United States Environmental Protection Agency (U.S. EPA) will reallocate the funds to other states that can use the funds.
 - Projects must use American made steel, iron, and other manufactured goods unless certain exceptions are made by the U.S. EPA Administrator.
 - States must use a minimum of 50 percent of ARRA funds for principal forgiveness, negative interest rates, or grants (subsidy funds).
7. To meet the deadlines and requirements of ARRA and support the State Water Board’s existing policies and goals, it is useful for the State Water Board to:
 - Discontinue the yearly disbursement ceiling.
 - Suspend the match financing option.
 - Suspend demonstration of compliance with certain federal laws.
 - Give ARRA funding to projects that will be under contract to construct and sign a CWSRF funding agreement no later than February 16, 2010.
 - Reserve ARRA funds for a limited period of time for certain applicants.
 - Establish limits on how much ARRA funding a project may receive.
 - Reduce the interest rate on financing that does not qualify for other incentives.

DRAFT

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Eliminates the per agency disbursement ceiling until further notice, but continues to require the Deputy Director of the Division to evaluate, and limit if appropriate, the effect of large projects on the ability of other applicants to receive funding;
2. Discontinues match financing until further notice, but allows applicants that have submitted an application as of the date of this resolution to select match financing;
3. Directs Division staff to determine whether projects comply with state laws only, with the exception of federal super cross-cutters, for all projects until further notice;
4. Establishes the following primary guidelines for staff to follow while implementing the ARRA funds for California;
 - 50 percent of ARRA funds should be used as subsidy funds.
 - ARRA funds should be reserved for State Water Board priorities, beyond those specified in ARRA, only for a limited period of time.
 - ARRA funds should be distributed as fairly as possible.
 - Small, disadvantaged communities (<20,000 population and <80 percent of the statewide Median Household Income (MHI)) should receive priority for subsidy funds over other communities if subsidy funds become limited.
 - Projects with earlier construction start dates should receive priority for subsidy funds before projects with later construction start dates if subsidy funds become limited.
5. Reserves ARRA subsidy funds for categories of applicants according to the following schedule and limitations:

Subsidy Funds by Category of Applicant

Category	Subsidy Per Project	Conditions
Community MHI < 80 percent of statewide MHI. (25% ARRA)	<ul style="list-style-type: none"> ▪ Maximum: The lesser of 50 percent of project cost or \$10 million. ▪ Minimum: The lesser of \$3 million or 100 percent of project costs. ▪ Notwithstanding the Maximum and Minimums above, a community may receive enough subsidy to reduce service charges or implementation costs to 1.5 percent of MHI, but shall not receive more than is needed to reduce service charges or implementation costs to less than 1.5 percent of MHI. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009. ▪ Completed Approval of Award (AOA) request must be received by the Division before January 1, 2010. ▪ Copy of executed construction contract must be received by the Division before February 1, 2010.

D R A F T

Category	Subsidy Per Project	Conditions
<p>Projects that lost previously committed state grant funding due to freeze on state bonds.</p> <p>(25% ARRA)</p>	<ul style="list-style-type: none"> ▪ Maximum: \$5 million. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF Program and ARRA eligibility requirements. ▪ Projects must have an executed grant agreement that was suspended and an executed construction contract or proof of project initiation must be received by the Division before May 17, 2009. ▪ In addition to the primary guidelines above, priority for subsidy projects may be determined by the Executive Director consistent with established State Water Board guidance.

6. Makes ARRA subsidy funds that are not committed to projects that lost previously committed state grant funding available to communities with MHIs less than 80 percent of statewide MHI starting May 17, 2009;
7. Makes ARRA subsidy funds that are not committed to communities with MHIs less than 80 percent of statewide MHI or projects that lost previously committed state grant funding available for distribution to all eligible applicants starting September 1, 2009;
8. Delegates to the Executive Director the responsibility to determine, after public review, how much subsidy funds remain uncommitted after August 31, 2009, and the authority to distribute those funds as fairly as possible to all eligible applicants that submitted an AOA request before January 1, 2010, and submitted copies of an executed construction contract before February 1, 2010;
9. Determines that any applicant with an executed debt obligation after October 1, 2008 is eligible for any remaining subsidy funds distributed in this manner;
10. Delegates authority to the Executive Director, or designee, to modify the amount of subsidy a project may receive if it will ensure a reasonable implementation of ARRA provided the Executive Director, or designee, only takes such action after any prospective recipient, adversely affected by the action, has an opportunity to comment on the proposed action with the caveat that the Executive Director or designee, without restricting their authority, should update the Board Members and the public at Board Meetings, or by other appropriate communication, on the progress of implementing ARRA and recommend appropriate adjustments to the implementation plan or other changes in policy or procedure necessary to achieve the most favorable result for water quality in California;
11. Offers reduced interest rates for innovation and efficiency projects as well as all other financing not eligible for other incentives or subsidies, according to the following schedule; and

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Interest Rate Incentives by Category of Applicant

Category	Interest Rate	Conditions
Innovation and efficiency projects	Zero (0) Percent	<ul style="list-style-type: none">▪ Up to a total of \$60 million in cumulative financing.▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before July 18, 2009.▪ Completed AOA request must be received by the Division before January 1, 2010.▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.
All projects	One (1) Percent	<ul style="list-style-type: none">▪ Completed application must be received by the Division and the financing agreement must be executed or be executable before September 1, 2009.▪ Completed AOA request must be received by the Division before January 1, 2010.▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.

12. Determines that innovation and efficiency projects are those that substantially meet US EPA's final guidance ([Attachment A is U.S. EPA's draft guidance](#)) for innovation and efficiency projects, or projects that will achieve a goal or substantially meet a target, or guidance established through a public process or established by a state or national entity that regulates or represents innovation or efficiency interests, and are consistent with the existing CWSRF Program eligibility criteria.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on March 17, 2009.

Jeanine Townsend
Clerk to the Board