

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
JUNE 5, 2012**

ITEM 6

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE MISSION SPRINGS WATER DISTRICT (DISTRICT), AD-12 AREA F & M-1 SEWER CONSTRUCTION PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4250-310

DISCUSSION

In accordance with the State Water Resources Control Board's (State Water Board's) *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), amended on March 17, 2009, projects on the adopted priority list need State Water Board approval to receive CWSRF funding. The State Water Board may approve a CWSRF PFC after issuance of a project Facility Plan Approval (FPA). The Division of Financial Assistance (Division) issued the FPA for the District's Project, and the District agreed with the content and conditions of the FPA. The Project is listed on the CWSRF Program Project Priority List in Priority Class D. The Project is also included in the CWSRF Program *Intended Use Plan* (IUP).

In accordance with Section IX.K of the Policy, a PFC may be approved by the Deputy Director of the Division if the Project is routine and non-controversial. The Project is considered non-routine due to pending litigation related to a potential rate rollback initiative; therefore, the PFC must be presented to the State Water Board for consideration.

PROJECT INFORMATION

The Project is located in the City of Desert Hot Springs and adjacent unincorporated lands, located in eastern Riverside County, approximately 13 miles north of Palm Springs. The purpose of the Project is to mitigate the risk of groundwater contamination due to septic system usage. The population served by the District relies solely on groundwater for their water supply. A study conducted by the U.S. Geological Survey in 1996 concluded that wastewater discharge from onsite septic systems poses a significant threat to the groundwater supply in the greater Desert Hot Springs area, and recommended the abatement of onsite septic systems. The Project is part of an ongoing effort to prevent groundwater contamination by decommissioning individual septic systems and connecting residents to the District's municipal sewer system. Assessment District (AD) fees will be used to fund the Project. AD-12, which was approved by voters in 2004 with a 10-year completion goal, is comprised of 13 service areas referred to as Areas A through M. The first AD-12 project, Area L, was completed in 2010.

The current Project consists of installation of new wastewater collection sewer pipeline in the existing right-of-way in AD-12 Area F. Construction of sewer and laterals in AD-12 Area M-1 will be incorporated into the Plans and Specification for the Project as additive bid items. The District will make a determination regarding whether to proceed with work in AD-12 Area M-1 prior to submitting the Approval of Award request to the Division.

The following provides a detailed discussion of the scope of work for each area.

AD-12 Area F

AD-12 Area F involves construction of approximately 44,200 linear feet (LF) of 8", 10", and 12" vitrified clay pipe (VCP) sewer main pipeline, and 30,940 feet of 4", and 6" VCP sewer lateral pipeline in public right-of-way to connect 1,187 parcels in northwest Desert Hot Springs.

AD-12 Area M-1

AD-12 Area M-1 involves construction of approximately 15,000 LF of 8", 15", 21" & 24" VCP sewer pipeline, and 9,900 LF of 4" VCP sewer lateral pipeline in public right-of-way to connect 336 parcels in southeast Desert Hot Springs.

ENVIRONMENTAL IMPACT

State Water Board staff conducted a Tier II environmental review, reviewed the environmental documents provided by the District, and determined that the Project will not result in any significant adverse water quality impacts. Special conditions will be included in Exhibit D of the District's CWSRF financing agreement to ensure compliance with Section 106 of the National Historic Preservation Act and the Migratory Bird Treaty Act.

The District prepared an Initial Study and Mitigated Negative Declaration (IS/MND; State Clearinghouse No. 1998091062) for a larger project (the Project is a subset of the larger project). The District adopted the IS/MND and a Mitigation Monitoring and Reporting Program and approved the larger project (which includes the Project) on February 16, 1999, and filed a Notice of Determination with the Governor's Office of Planning and Research on March 1, 1999 and the Riverside County Clerk on March 4, 1999.

The District prepared an addendum to the IS/MND (Addendum No. 1) to provide an updated environmental analysis, and address the Project. The District adopted the Addendum No.1 and approved the Project updates on March 7, 2011, and filed a Notice of Determination with the Riverside County Clerk on March 8, 2011 and OPR on March 9, 2011.

State Water Board staff will file a Notice of Determination with the Office of Planning and Research following funding approval.

FISCAL IMPACT

Principal Forgiveness Analysis

As outlined in the Amended CWSRF IUP for SFY 2010/2011, adopted by the State Water Board on May 17, 2011, \$97,770,482 in FFY 2010 and FFY 2011 principal forgiveness is available to two (2) categories of communities: 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and 2) Other Communities. It is anticipated that an additional \$8.4 million in principal forgiveness will be available to these categories in FFY 2012.

The District's Median Household Income (MHI) is estimated at \$31,293, approximately 53 percent of the State of California MHI. The District estimates that they will provide sewer service to approximately 18,594 persons upon completion of the Project. As of January 1, 2012, the District's single-family residential wastewater rate is \$31.23 per month. The monthly wastewater rate plus the assessment fee of \$14.95 per month equals approximately 1.8 percent of the District's MHI. As a small severely disadvantaged community with total wastewater user rates more than 1.5 percent of the District's MHI, the District qualifies for Category 1 principal forgiveness.

The District may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness. With an estimated eligible cost of \$10,319,367, the Project qualifies for \$5,159,684 in principal forgiveness.

Fiscal Impact on Applicant's Finances

A credit review analyzed the District's ability to enter into a financing agreement for a total of \$10,319,367 for construction and allowances. The credit review provided recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity, and reserve fund requirements for the financing agreements.

The most recent sewer rate increases were adopted on November 18, 2010, pursuant to Proposition 218. As of January 1, 2012, monthly service charges are \$31.23 per single family residence. A total assessment fee of \$3,588.00 or \$179.40 per year for a term of 20 years will be assessed on each parcel in the project area. Combined sewer rates and assessment fees equal approximately 1.8 percent of the District's 2011 MHI.

As of June 30, 2011, the District has the following five (5) outstanding debts that will be on parity with the CWSRF debt:

Debt Name & Issue Date	Maturity Date	Annual Debt Service	Balance as of 6/30/11
LaSalle Bank 9/2007 (AD-12 Phase 2)	9/21/27	\$127,690	\$1,421,183
LaSalle Bank 6/2006 (AD-12 Phase 1)	6/26/26	\$180,334	\$1,845,151
LaSalle Bank 7/2003 (Little Morango)	12/17/13	\$654,848	\$1,538,609
LaSalle Bank 7/2003 (AD-11 Phase 2)	7/28/15	\$190,984	\$778,310
LaSalle Bank 12/2001 (AD-11 Phase 1)	12/26/13	\$203,559	\$473,654
Total		\$1,357,415	\$6,056,907

* Two LaSalle Bank debts will be paid in full in December 2013, therefore, the annual debt service on the existing debt, as of the first CWSRF payment date (estimated to be August 2014), will be \$499,008.

Security and Source of Financing Repayment

The District shall dedicate special assessment district funds, charges, and fees assessed and collected from AD-12, and net revenues of the sewer system to the repayment of the proposed financing agreement.

A financing agreement for \$10,319,367, with \$5,159,684 in principal forgiveness and a term of twenty years at an estimated interest rate of 2.20 percent, will have an annual debt service of \$321,684. When added to the existing debt service of \$1,357,415 for fiscal year 2011/12, the total debt service would be \$1,679,099. When compared to the projected net revenues of the sewer system for fiscal year 2011/12 plus annual assessments for AD-12 Area F, the debt service coverage would be 1.55. This exceeds both the CWSRF policy requirement that net revenues be at least 1.10 times the total debt service, and existing debt covenants that net revenues be equal to at least 1.25 times the total debt service.

The District is involved in litigation related to an initiative to roll back rates to 2009 levels. If rates were rolled back, projected debt service coverage would be 2.17, which would meet existing debt covenants that require net revenues to be at least 1.25 times the total debt service.

COMPARATIVE REVENUES AND EXPENSES ANALYSIS

Revenues and expenses for fiscal years 2008/09 through 2010/11, and projections for future fiscal years are summarized below. The last column indicates the District's debt coverage if rates were reduced to 2009 levels.

Mission Springs Sewer System Revenues & Expenses

Fiscal Year	2008/09	2009/10	2010/11	2011/12 Projections	2012/13 Projections	2013/14 Projections	2014/15 Projections	Roll Back to 2009 Rates²
Assessment AD-12 ¹	\$ -	\$ -	\$ -	\$212,948	\$212,948	\$212,948	\$212,948	\$212,948
Operating Revenues	\$2,256,829	\$2,572,542	\$2,833,081	\$3,368,158	\$3,867,756	\$4,055,511	\$4,059,259	\$2,572,542
Property Taxes	\$383,311	\$391,494	\$311,673	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
Interest Revenues	\$307,087	\$370,686	\$312,528	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000
Backup & Front Footage Fees	\$65,660	\$126,154	\$174,799	\$748,364	\$960,661	\$960,661	\$960,661	\$960,661
Total Revenues	\$3,012,887	\$3,460,876	\$3,632,081	\$4,879,470	\$5,591,365	\$5,779,120	\$5,782,868	\$4,296,151
Operating Expenses	\$2,147,275	\$2,447,894	\$2,290,105	\$2,274,438	\$2,352,010	\$2,433,010	\$2,516,667	\$2,516,667
Net Revenues Available for Debt Service	\$865,612	\$1,012,982	\$1,341,976	\$2,605,032	\$3,239,355	\$3,346,110	\$3,266,201	\$1,779,484
Existing Debt Service	\$1,858,049	\$1,911,451	\$1,997,929	\$1,357,415	\$1,357,415	\$1,357,415	\$499,008	\$499,008
Proposed Debt Service with 50% PF	\$0	\$0	\$0	\$321,684	\$321,684	\$321,684	\$321,684	\$321,684
Total Debt Service	\$1,858,049	\$1,911,451	\$1,997,929	\$1,679,099	\$1,679,099	\$1,679,099	\$820,692	\$820,692
Debt Service Coverage ³	0.47	0.53	0.67	1.55	1.93	1.99	3.98	2.17
Proposed Debt Service with 0% PF	\$0	\$0	\$0	\$643,345	\$643,345	\$643,345	\$643,345	\$643,345
Total Debt Service	\$1,858,049	\$1,911,451	\$1,997,929	\$2,000,760	\$2,000,760	\$2,000,760	\$1,142,353	\$1,142,353
Debt Service Coverage	0.47	0.53	0.67	1.30	1.62	1.67	2.86	1.56

- 1) Only assessment fees from AD-12 Area F were used in the calculation since AD-12 Area M-1 will be bid as an additive item. AD-12 revenues will increase by \$179.40 per year for each additional parcel sewered in AD-12 Area M-1. Any additional connections in AD-12 Area M-1 will increase assessment revenues and improve debt coverage.
- 2) Based on Prop 218 documentation, the 2009 rates were in effect through December 31, 2010, therefore, the 2009/10 operating revenues were used in the rate rollback calculation.
- 3) Potential upfront legal fees estimated at \$100,000, and additional legal fees of \$20,000 for a few years would not affect the District's ability to meet required debt service coverage based on current projections.

The proposed resolution requires the District to establish a reserve fund equal to one year's debt service from available cash. A reserve fund in the amount of one year's debt service is maintained so that in the event of non-payment there are funds available to make the payment.

FISCAL IMPACT ON THE CWSRF PROGRAM

As of 4/03/2012:	SFY 2011-12	SFY 2012-13	SFY 2013-14	SFY 2014-15	SFY 2015-16
Beginning Balance	\$432,604,699	\$244,075,736	(\$30,434,653)	(\$64,280,165)	\$79,086,212
Estimated Repayments	\$222,133,150	\$232,133,150	\$242,133,150	\$252,133,150	\$262,133,150
Debt Service on Revenue Bonds	(\$30,228,204)	(\$27,714,204)	(\$23,821,829)	(\$20,966,279)	(\$19,356,506)
Estimated Capitalization Grants	\$68,764,114	\$97,036,800	\$28,800,000	\$28,800,000	\$28,800,000
Local Match Credits	\$3,388,414	\$2,554,104	\$853,177	\$891,958	\$1,008,300
Estimated SMIF Interest	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000
Estimated Disbursements	(\$438,086,437)	(\$526,603,120)	(\$261,579,107)	(\$116,546,586)	(\$37,853,808)
Subtotal	\$260,075,736	\$22,982,467	(\$42,549,263)	\$81,532,078	\$315,317,348
Proposed Projects Estimated Disbursements					
Mission Springs Water District, #4250-310		(\$5,159,683)			
City of San Clemente, #4516-110		(\$7,422,003)	(\$4,948,002)		
City of San Diego, #4905-120		(\$2,460,000)	(\$1,728,200)		
South Bayside System Authority, #5216-120	(\$13,000,000)	(\$19,000,000)	(\$4,329,000)		
City of Redding, #5380-110	(\$500,000)	(\$11,500,000)	(\$600,000)		
Santa Clarita Valley Sanitation District, #7045-110	(\$2,500,000)	(\$2,250,000)			
City of Yuba City, #7113-110		(\$750,000)	(\$3,050,000)	(\$900,000)	
Valley Center MWD, #7454-110		(\$437,268)	(\$1,083,204)	(\$180,528)	
Valley Center MWD, #7454-120		(\$4,003,166)	(\$4,095,996)	(\$1,365,338)	
Valley Center MWD, #7454-130		(\$435,000)	(\$1,896,500)		
Ending Balance:	\$244,075,736	(\$30,434,653)	(\$64,280,165)	\$79,086,212	\$315,317,348
Notes:					
<ul style="list-style-type: none"> • The State Water Board approved the sale of up to \$300 million in Revenue Bonds in September 2005 for the CWSRF Program to cover any shortfall of funds. • Estimated repayments include repayments from existing and future financing. • Estimated disbursements include disbursements remaining on executed financing and planned disbursements on projects with preliminary funding commitments. • Local match credits are the anticipated funds that will be contributed for local match financing included in "Estimated Disbursements." • Excludes 2010, 2011, and 2012 Principal Forgiveness funds. 					

FISCAL IMPACT ON CWSRF PROGRAM PRINCIPAL FORGIVENESS

(as of 04/23/2012)	Principal Forgiveness			
	Category 1	Category 1	Category 2	Total
		SCG fees		
Beginning Balance	\$57,662,289	\$2,000,000	\$40,108,193	\$99,770,482
City of Williams, #4049-110	(\$6,000,000)			
Mission Springs Water District, #4250-310	(\$5,159,684)			
City of San Diego, #4905-110			(\$3,000,000)	
City of San Diego, #4905-120			(\$3,000,000)	
City of Tulelake, #4930-110	(\$3,626,150)			
City of Redding, #4971-240			(\$3,000,000)	
Graton Community Services District, #4986-110	(\$6,000,000)			
City of Modesto, #5175-210			(\$3,000,000)	
Russian River County Sanitation District, #5201-110	(\$1,942,225)			
San Luis Obispo (Los Osos), #5230-110	(\$7,500,000)			
Calaveras County Water District, #5249-110	(\$4,420,880)			
Placer County Sewer Maintenance District 1, #5275-110	(\$6,000,000)			
Heber Public Utility District, #5302-110	(\$6,000,000)			
Victor Valley Wastewater Rec Authority, #5376-110			(\$3,000,000)	
City of Tehachapi, #5563-110			(\$2,121,030)	
Susanville Sanitary District, #5727-110			(\$1,392,595)	
City of Redding, #5835-110			(\$1,233,052)	
City of East Palo Alto, #5956-110			(\$268,321)	
The Bay Foundation of Morro Bay, #6701-110			(\$368,926)	
City of Los Angeles, #7055-110			(\$3,000,000)	
City of Stockton, #7085-110			(\$1,625,000)	
City of Yuba City, #7113-110			(\$3,000,000)	
Santa Nella County Water District, #7132-110			(\$2,146,875)	
Earlimart Public Utility District, #7190-110			(\$359,707)	
Eastern Municipal Water District, #7203-110			(\$5,000,000)	
City of Rio Dell, #7401-110	(\$6,000,000)			
City of Redding, #7456-110			(\$1,682,280)	
City of Anaheim, #7620-110			(\$937,464)	
City of Anaheim, #7622-110			(\$374,383)	
City of Anaheim, #7630-110			(\$391,337)	
Planada CSD, #7649-110		(\$380,000)		
City of Yuba City, #7668-110			(\$3,000,000)	
Sutter County, #7732-110	(\$400,180)	(\$1,000,000)		
City of Anaheim, #7800-110			(\$923,344)	
City of Colfax, #7806-110 10	(\$3,319,000)			
City of Dunsmuir, #7820-110	(\$3,737,500)	(\$620,000)		
Subtotal	(\$60,105,619)	(\$2,000,000)	(\$42,824,314)	(\$104,929,933)
Ending Balance *	(\$2,443,330)	\$0	(\$2,716,121)	(\$5,159,451)

* The negative balance will be covered by the estimated \$8.4 million in FFY 2012 principal forgiveness.

Pending Litigation

Several of the District's ratepayers collected the required signatures to put an initiative on the ballot to roll rates back to 2009 levels, and to limit the District's ability to impose future increases. In July 2011, the District filed a complaint with the Superior Court of California in Riverside County questioning the legality of the initiative. The parties of interest in that case filed a motion to strike the District's complaint, which was denied; however, that decision is being appealed. Hearings on the District's initial complaint are being postponed until the appeal is resolved and, therefore, most likely will not occur until summer 2012 or later.

Pursuant to the CWSRF Policy, while the Division may proceed with the initial financing agreement and allow planning and design reimbursement, the Division will not amend the financing agreement to incorporate the bid costs or disburse funds for construction until the District provides a legal opinion (1) explaining the status of and providing the anticipated timeline for resolution of the pending litigation, and (2) certifying that there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the District's payment source, (b) the ability of the District to agree to pay the CWSRF financing, or (c) the ability of the District to manage and implement the Project.

POLICY ISSUE

Should the State Water Board approve the Resolution to:

1. Approve a CWSRF PFC of \$10,319,367 for the District's Project, with \$5,159,684 in principal forgiveness and a term of twenty years at an interest rate of half of the State's General Obligation bond rate?
2. Direct Division staff to allocate \$10,319,367 consistent with the construction schedule and availability of funds?
3. Condition this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by October 31, 2012? In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120 day extension for good cause.
4. Condition this approval to require the District to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the District's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any settlement agreements or court rulings within 15 days of such event?
5. Condition this approval to require the District to provide the following updated legal opinions? The Division will not amend the financing agreement to incorporate bid costs or authorize the disbursement of funds for construction until these legal opinions have been submitted.
 - An updated legal opinion certifying (1) that the District has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer, and (2) that the District has obtained all encroachment permits necessary to implement the Project; and

- A legal opinion (1) explaining the status of and providing the anticipated timeline for resolution of the pending litigation, and (2) certifying that there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the District's payment source, (b) the ability of the District to agree to pay the CWSRF financing, or (c) the ability of the District to manage and implement the Project.
6. Condition this approval to require the District to complete a pre-construction survey 30 days prior to construction activities to avoid potential impacts to migratory birds, in accordance with the MBTA?
 7. Condition this approval to require the District to comply with the following, in accordance with Section 106 of the NHPA?
 - Require archaeological monitoring for all excavation into undisturbed soils in Service Area F east of Palm Drive;
 - Prepare a monitoring plan that includes implementation procedures for inadvertent discoveries prior to any trenching east of Palm Drive in Service Area F; and
 - Notify the State Water Resources Control Board Cultural Resources Officer (CRO) of any discoveries of cultural material and consult with the CRO on any subsequent resource evaluation and treatment. Consultation with the State Historic Preservation Officer may be necessary if a newly discovered resource meets the criteria of eligibility for the National Register of Historic Places.
 8. Condition this approval, as determined by the District's credit review, with the following?
 - The financing agreement shall be secured on parity with all outstanding debt;
 - The District shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.25 times the total annual debt service;
 - The District shall establish a restricted Reserve Fund equal to one year's debt service prior to the construction completion date. The Reserve Fund shall be maintained for the full term of the Financing Agreement;
 - The District shall not incur future senior debt. The District's future debt may be issued on parity with CWSRF debt if policy conditions are met (Section X, G1); and
 - The financing agreement shall be limited to the maximum amount of \$10,319,367, with \$5,159,684 in principal forgiveness; unless new information supporting the credit review changes and a supplemental credit review is performed.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 2 of the Strategic Plan Update: 2008-2012 to improve and protect groundwater quality in high-use basins by 2030.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE MISSION SPRINGS WATER DISTRICT (DISTRICT), AD-12 AREA F & M-1 SEWER CONSTRUCTION PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4250-310

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on March 17, 2009, adopted the amended "*Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*" (Policy);
2. The Project is listed on the CWSRF Program Priority List in Priority Class D;
3. The Division of Financial Assistance (Division) issued a [Facilities Plan Approval \(FPA\)](#) for the District's Project, and the District agreed with the content and conditions of the FPA;
4. As outlined in the Amended CWSRF Intended Use Plan (IUP) for SFY 2010/2011, adopted by the State Water Board on May 17, 2011, \$97,770,482 in FFY 2010 and FFY 2011 principal forgiveness is available to two (2) categories of communities:
 - 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and
 - 2) Other Communities. It is anticipated that an additional \$8.4 million in principal forgiveness will be available to these categories in FFY 2012;
5. The City's application was complete and ready for a commitment prior to adoption of the FFY 2012 CWSRF IUP on March 20, 2012; therefore, the City's principal forgiveness amount may be based on the criteria in the previous version of the IUP;
6. As a small (less than 20,000 persons receiving sewer services), severely disadvantaged community (median household income [MHI] less than 60 percent of the statewide MHI) with combined wastewater user rates and assessment district fees more than 1.5 percent of the community's MHI, the District may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness;
7. The District is the lead agency under the California Environmental Quality Act (CEQA) and prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for a larger project (the Project is a subset of the larger project). The District complied with CEQA and the CEQA guidelines and circulated the IS/MND through the State Clearinghouse (State Clearinghouse No. 1998091062) and the public;

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8. Adequate public participation was provided through the CEQA review process;
9. The District adopted the IS/MND and a Mitigation Monitoring and Reporting Program and approved the larger project (which includes the Project) on February 16, 1999;
10. The District filed a Notice of Determination with the Governor's Office of Planning and Research on March 1, 1999 and the Riverside County Clerk on March 4, 1999, for the IS/MND;
11. The District prepared an addendum to the IS/MND (Addendum No. 1) to provide an updated environmental analysis, and address the Project. The District adopted the Addendum No.1 and approved the Project updates on March 7, 2011;
12. The District filed an Notice of Determination with the Riverside County Clerk on March 8, 2011, and Office of Planning and Research on March 9, 2011, for the Addendum No.1;
13. The environmental documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. The Project will not result in any significant adverse water quality impacts;
14. With the understanding that the District will be required to implement the specified mitigation measures and obtain the necessary permits and approvals, the City has complied with all pertinent state and federal environmental laws. Special conditions will be included in Exhibit D of the District's CWSRF financing agreement to ensure compliance with Section 106 of the National Historic Preservation Act, and the Migratory Bird Treaty Act; and
15. The District is currently involved in a lawsuit related to a potential rate rollback.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$10,319,367 for the District's Project, with \$5,159,684 in principal forgiveness, and a term of twenty years at an interest rate of half of the State's General Obligation bond rate.
2. Directs Division staff to allocate \$10,319,367 consistent with the construction schedule and availability of funds.
3. Conditions this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by October 31, 2012. In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120 day extension for good cause.

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4. Conditions this approval to require the District to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the District's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any settlement agreements or court rulings within 15 days of such event.
5. Conditions this approval to require the District to provide the following updated legal opinions. The Division will not amend the financing agreement to incorporate bid costs or authorize the disbursement of funds for construction until these legal opinions have been submitted:
 - An updated legal opinion certifying (1) that the District has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer, and (2) that the District has obtained all encroachment permits necessary to implement the Project; and
 - A legal opinion (1) explaining the status of and providing the anticipated timeline for resolution of the pending litigation, and (2) certifying that there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the District's payment source, (b) the ability of the District to agree to pay the CWSRF financing, or (c) the ability of the District to manage and implement the Project.
6. Conditions this approval to require the District to complete a pre-construction survey 30 days prior to construction activities to avoid potential impacts to migratory birds, in accordance with the Migratory Bird Treaty Act.
7. Conditions this approval to require the District to comply with the following, in accordance with Section 106 of the National Historic Preservation Act:
 - Require archaeological monitoring for all excavation into undisturbed soils in Service Area F east of Palm Drive;
 - Prepare a monitoring plan that includes implementation procedures for inadvertent discoveries prior to any trenching east of Palm Drive in Service Area F; and
 - Notify the State Water Resources Control Board Cultural Resources Officer of any discoveries of cultural material and consult with the Cultural Resources Officer on any subsequent resource evaluation and treatment. Consultation with the State Historic Preservation Officer may be necessary if a newly discovered resource meets the criteria of eligibility for the National Register of Historic Places.
8. Conditions this approval, as determined by the District's credit review, with the following:
 - The financing agreement shall be secured on parity with all outstanding debt;

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- The District shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.25 times the total annual debt service;
- The District shall establish a restricted Reserve Fund equal to one year's debt service prior to the construction completion date. The Reserve Fund shall be maintained for the full term of the Financing Agreement;
- The District shall not incur future senior debt. The District's future debt may be issued on parity with CWSRF debt if policy conditions are met (Section X, G1); and
- The financing agreement shall be limited to the maximum amount of \$10,319,367, with \$5,159,684 in principal forgiveness, unless new information supporting the credit review changes and a supplemental credit review is performed.

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 Resources Control Board held on June 5, 2012.

Jeanine Townsend
Clerk to the Board