

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
OCTOBER 5, 2016**

ITEM 3

SUBJECT

CONSIDERATION OF A RESOLUTION SUPERSEDING IN PART RESOLUTION NOS. 2009-0020 AND 2011-0027 AND AUTHORIZING THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE TO AMEND CLEAN WATER STATE REVOLVING FUND (CWSRF) FINANCING AGREEMENTS WITH INLAND EMPIRE UTILITIES AGENCY (AGENCY) TO CLARIFY LIENS AND PLEDGES

DISCUSSION

The Agency's service area is located within the jurisdiction of the Santa Ana Regional Water Quality Control Board. The Agency provides regional wastewater service, as well as imported and recycled water deliveries to the City of Chino Hills, City of Chino, City of Fontana, City of Montclair, City of Ontario, City of Upland, and Cucamonga County Water Agency

Applicants receiving financing from the State Water Resources Control Board (State Water Board) through the CWSRF program must pledge one or more sources of existing revenue and/or funds as security for the CWSRF financing agreement. Generally, municipal applicants pledge their wastewater enterprise revenues as security for debts associated with their wastewater systems, and they pledge water enterprise revenues as security for debts related to their water systems. Applicants with robust capital improvement programs and sophisticated finance departments are likely to have revenue bond or other debt in addition to the CWSRF debt.

In most cases, the CWSRF debt will be a senior or parity obligation. Historically, the CWSRF Policy restricted recipients from incurring additional debt at the senior or parity level. Over time, that restriction was modified. Additionally, the longstanding expectation that the CWSRF debt always occupy the recipient's top debt tier was softened. Currently, the CWSRF Policy provides that the Division of Financial Assistance (Division) may take a subordinate position to the applicant's existing debt if the Division determines that credit considerations support a lower lien status, and it provides that a recipient may incur additional parity or senior debt under certain, limited conditions.

The Agency currently has nineteen (19) CWSRF debt obligations with an outstanding balance of approximately \$127 million, as summarized in [Exhibit A](#). In addition to its CWSRF debt, it has four series of revenue bonds outstanding. An assortment of lien positions and pledged revenues is reflected within the CWSRF agreements, as shown in Exhibit A. The Agency desires to clarify and conform its CWSRF debt obligations, and the Division supports this request, which will require [Resolution Nos. 2009-0020](#) and [2011-0027](#) to be modified.

In Resolution No. 2009-0020, the State Water Board conditioned approval of CWSRF financing for Project No. C-06-5176-110 on a pledge of both recycled water net revenues in the senior position, which position was then closed, and also wastewater revenues in a position subordinate to existing wastewater debt.

In Resolution No. 2011-0027, the Board conditioned approval of CWSRF financing for two Project Nos. C-06-5318-110 and C-06-5319-110 on the new CWSRF debt being at parity with the Agency's existing top tier bond debt, which bonds were secured by the Agency's net revenues, excluding its water enterprise revenues. The conditions contained in these resolutions affect not only the projects identified in the resolutions, but also future CWSRF obligations undertaken by the Agency.

Division credit staff have evaluated the Agency's enterprise funds, existing debt obligations, and audited financial statements, and are satisfied that amending the CWSRF agreements to reflect a subordinate pledge of net wastewater and recycled water enterprise revenues will not negatively affect the CWSRF or the CWSRF revenue bond financing program. The Agency's CWSRF agreements should be amended to do the following: (1) reflect a pledge consistent with the Agency's revenue bond pledge, (2) reflect a unified lien position expectation, and (3) firmly close the Agency's senior lien position except for refundings.

Therefore, the Division recommends that the Board (1) modify the conditions pertaining to lien positions and pledged security sources established in Resolution Nos. 2009-0020 and 2011-0027, and (2) authorize the Deputy Director of the Division to amend the existing CWSRF agreements with the Agency to reflect a consistent pledge and subordinate lien status, and to close the senior position.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this item.

POLICY ISSUE

Should the State Water Board supersede, in part, Resolution Nos. 2009-0020 and 2011-0027, to the extent that the conditions therein related to pledge and lien status conflict with this Resolution?

Should the State Water Board authorize the Deputy Director of the Division to amend the existing CWSRF agreements with the Agency to reflect a consistent pledge and subordinate lien status, and to close the senior position, except for future refundings?

FISCAL IMPACT

There will be negligible fiscal impact associated with the administrative cost of amending the agreement that will be absorbed in the normal administrative costs of running the CWSRF program.

REGIONAL BOARD IMPACT

There is no regional board impact associated with this item.

STAFF RECOMMENDATION

The State Water Board should supersede, in part, Resolution Nos. 2009-0020 and 2011-0027, to the extent that the conditions therein related to pledge and lien status conflict with this Resolution.

The State Water Board should authorize the Deputy Director of the Division to amend the existing CWSRF agreements with the Agency to reflect a consistent pledge and subordinate lien status, and to close the senior position, except for future refundings.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

SUPERSEDING IN PART RESOLUTION NOS. 2009-0020 AND 2011-0027 AND
AUTHORIZING THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE
TO AMEND CLEAN WATER STATE REVOLVING FUND (CWSRF)
FINANCING AGREEMENTS WITH INLAND EMPIRE UTILITIES AGENCY (AGENCY)
TO CLARIFY LIENS AND PLEDGES

WHEREAS:

1. Through the CWSRF Program, the State Water Resources Control Board (State Water Board) provides subsidized, below-market, long-term financing to assist local governments throughout the state with wastewater and water recycling construction projects;
2. The State Water Board's Division of Financial Assistance (Division) implements the CWSRF Program pursuant to the "Policy for Implementing the Clean Water State Revolving Fund" (CWSRF Policy), first adopted in 1989 and last amended by the State Water Board on February 17, 2015;
3. The State Water Board has also historically approved and provided direction on specific projects via resolution;
4. Since 2002, the Agency has entered into and is currently party to nineteen (19) CWSRF financing agreements, which agreements reflect an assortment of pledged revenue sources and various lien positions, consistent with policies and procedures and Board direction in effect at the time of execution;
5. [Resolution Nos. 2009-0020](#) and [2011-0027](#) contain conditions specific to the Agency regarding lien position and pledged revenue sources, which conditions affect a number of the existing agreements; and
6. The Division seeks to clarify the pledged revenue sources and lien positions for existing and future CWSRF financing agreements with the Agency, consistent with the current CWSRF Policy.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Supersedes, in part, Resolution Nos. 2009-0020 and 2011-0027, to the extent that the conditions therein related to pledge and lien status conflict with this Resolution; and

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2. Authorizes the Deputy Director of the Division to amend the existing CWSRF agreements with the Agency to reflect a consistent pledge and subordinate lien status, and to close the senior position, except for future refundings.

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 October 5, 2016.

Jeanine Townsend
Clerk to the Board