

State Water Resources Control Board
Division of Financial Assistance
Drinking Water State Revolving Fund Program
APPENDIX A: GUIDELINES FOR CONSOLIDATION PROJECTS

I. Purpose, Overview and Definitions

The State Water Resources Control Board (State Water Board) Division of Financial Assistance (Division) has produced these guidelines to aid Public Water Systems and other eligible applicants that are applying for financing for consolidation projects under the Drinking Water State Revolving Fund (DWSRF) Program and its complementary funding sources.

This guidance will cover:

- DWSRF Program background.
- Types of consolidation projects and parties.
- Application considerations for DWSRF financing for consolidation projects.
- Terms and conditions for consolidation agreements.
- State Small Water System and domestic well consolidation project considerations.

The following definitions are used in this Appendix:

“Consolidation” means joining two or more Public Water Systems, State Small Water Systems, or affected residences into a single Public Water System.¹ For purposes of these Guidelines, the term “consolidation” will also be used to refer to projects that will achieve the following: provision of water via a master meter agreement where the Subsumed Water System is no longer separately permitted, or managerial consolidation where separate water system permits may still exist upon completion of the project. The term “consolidation” does not include the provision of water via an interconnection where the water systems will continue to operate under separate PWS permits.

“Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the Recipient, setting forth the terms, provisions, and conditions governing the State Water Board financing for the consolidation project, and the repayment, if any. This document may be a loan, grant, or another financing instrument.

¹ CHSC section 116681, subd. (g). While this Appendix is focused on issues applicable to consolidation of Public Water Systems, Section VII of this Appendix includes a brief summary of key aspects to consider for projects to connect State Small Water Systems or affected residences to Public Water Systems.

“Non-Financing Participant” means the owner/governing entity of any Public Water System participating in the consolidation project other than the recipient of the Financing Agreement.

“Public Water System” or **“PWS”** means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances that has fifteen (15) or more service connections or regularly serves an average of at least twenty-five (25) individuals daily at least 60 days out of the year.

“Receiving Water System” or **“Receiving System”** means the Public Water System that provides service to a Subsumed Water System through consolidation. The Receiving System is the survivor of the consolidation.

“Subsumed Water System” or **“Subsumed System”** means the Public Water System consolidated into or receiving service from the Receiving Water System. In the case of managerial consolidations, “Subsumed System” is used to refer to the system that will change ownership as a result of the consolidation.

II. DWSRF Program Background

The State Water Board supports financing consolidation projects as a solution for water systems to achieve necessary Technical, Managerial, and Financial (TMF) capacity and long-term compliance with Safe Drinking Water Act standards. Financing from the DWSRF Program and complementary funding sources is generally available to help water systems plan, design, and construct the necessary infrastructure to complete a consolidation.

General information and tools for consolidation projects are available on the [Drinking Water Partnership and Consolidation webpage](#).

III. Types of Consolidation Projects

Consolidation may be physical or managerial and may be legally structured via new entity formation, merger, system acquisition, or other arrangement between the system owners/governing entities involved in the consolidation.

A. Physical Consolidation Projects: Consolidation via a permanent physical connection. The project must result in the owner/governing entity of the Receiving Water System having the legal right to access the distribution facilities (lines, pumps, tanks, etc.) and provide service within the service area of the Subsumed System(s).

1. **Permits.** The Subsumed Water System will surrender its domestic water supply permit and generally cease operating as a water system.

2. **Billing.** The Receiving Water System will directly bill each customer within the Subsumed Water System's service area, or the Subsumed Water System surrenders its domestic water supply permit but continues to bill its customers consistent with the criteria in Section 116280 of the CHSC.²

B. Managerial Consolidation Projects: Consolidation where no permanent physical connection is involved, and the participating systems remain separately permitted. The owner/governing entity of the Receiving Water System will own, operate, and maintain the entire Subsumed System, including the distribution system, and directly bill each customer within the Subsumed System's service area. This type of project is generally used to resolve a water quality, water quantity or TMF deficiency in the current Subsumed System (which will then cease independent operation post-consolidation). For managerial consolidations, "Subsumed System(s)" is used throughout these Guidelines to refer to the system that will change ownership as a result of the consolidation.

1. **Permits.** Each system retains own permits, continues to exist.
2. **Billing.** Receiving System takes over this responsibility.

C. "Intertie" or "Interconnection" Projects: Two or more systems physically connect to enable provision of water supply, but each system retains its domestic water supply permit and the owner/governing entity of each system continues to own, operate, and maintain its system. For intertie and interconnection construction projects, the Division may require a legally binding agreement between the participating systems agreeing to the connection and setting forth the terms of water service, similar to a consolidation agreement. Intertie or interconnections can be used as a continuous source of supply, standby source of supply or for emergency use only.

1. **Permits.** Each system retains own permits, continues to exist.
2. **Billing.** Each system bills on its own. Water costs allocated via agreement.
3. **Not a true consolidation.** Are not considered "consolidation" projects for funding purposes, as each system continues independent operation.

² As an example, Section 116280 may be applicable if the Subsumed System is an apartment or mobile home park, consists solely of distribution and storage facilities, and charges customers for water obtained by the Receiving System through a metered distribution system at no more than the rate customers would be charged by the Receiving System directly.

D. Planning Projects (Pre-Consolidation): Planning projects generally include planning and design of infrastructure improvements (e.g., pipelines, storage tank, new well, treatment) to either the Subsumed or Receiving System that may be necessary for a consolidation to occur.

1. **Interim Solutions / Phased Projects.** In some cases, an interim solution may be necessary as a long-term solution is being developed. For example, an emergency intertie or master meter may be helpful as necessary infrastructure improvements are determined and consolidation details are worked out. In other cases, if some work needs to be completed before other work can be done, the project may be bid out and completed in phases with approval from the Division. There may be instances where a managerial consolidation should take place prior to the physical connection of the systems. These are good discussions to have early on with the Division and the Division of Drinking Water (DDW) regarding funding eligibility and any other potential concerns or documentation that may be needed.
2. **Coordination Among Parties.** The planning/design phase normally requires coordination on planning documents between the owners/governing entities involved in the consolidation.
3. **Regionalization / Scope of Project.** In some cases, a regional solution may make sense where multiple systems/communities will either consolidate into a Receiving Water System or form a new system. In these cases, a regional masterplan type document may be beneficial, so the improvements are designed with the overall plan in mind. Applicants are encouraged to utilize available tools³ to identify additional nearby households or communities that could benefit from participating in the proposed consolidation. This approach may save time, money and resources by sharing documents such as environmental and engineering reports; and designing improvements with all systems/communities in mind (upsized pipeline, need for additional sources, etc.). DDW Engagement Unit staff can assist with this process.
4. **Commitment to Consolidate.** The Division may require the owner/governing entity of each water system to submit a written commitment to, at a minimum, consider consolidation before it can disburse funding for development of environmental and design documents. It is not necessary for all parties to sign one document as long as each system provides documentation showing its sincere commitment to explore the consolidation project and authorizing the applicant to act on behalf of the system for purposes of the planning project. The Deputy Director of the

³ [Drinking Water System Outreach Tool](#) and/or [Risk Assessment – State Small Water Systems and Domestic Wells](#)

Division, or designee, may waive the requirements of this paragraph on a case-by-case basis for good cause, for example, if the project is a consolidation which the State Water Board has ordered under CHSC section 116682.

IV. Applying for Consolidation Project Financing

Applicants for consolidation project financing should submit documentation and provide information as described herein. Applicants must also meet the requirements of the DWSRF Policy (Policy) and applicable DWSRF Intended Use Plan (IUP), and any other guidelines associated with the applicable funding source. Additional resources may be found at the following link:

https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/consolidation.html

A. Initial Communication, Coordination, and Project Name.

All systems and parties involved in a consolidation project have significant responsibilities. Early and routine communication is important for all parties involved to fully understand their responsibilities and provide the information needed to evaluate the viability of a potential consolidation. Parties should communicate in advance of applying for financing, as the financing application cannot move forward without the cooperation of all participating systems.

Outreach and communication with any necessary parties not already involved should begin immediately after consolidation is selected as the preferred project alternative at the latest, and prior to submittal of the financing application.⁴

For additional assistance with community involvement, please contact the Division's Technical Assistance program:

https://www.waterboards.ca.gov/water_issues/programs/grants_loans/tech_asst_funding.html

The Division recommends establishing a project name that can be used consistently across project documents. Consistent use of the project name for financial, environmental, and corporate authorization purposes will aid review.

⁴ All funding applicants are required to evaluate the feasibility of consolidation to be eligible for construction funding. The DWSRF IUP establishes project funding limitations on alternatives to consolidation where consolidation has been determined feasible. Applicants should refer to the most recent DWSRF IUP for information on these eligibility limitations and requirements to evaluate feasibility of consolidation.

B. Responsibilities of the Subsumed System(s).

For the Subsumed System(s), the responsibilities throughout the consolidation process may include, but are not limited to:

- Coordinate with Receiving System to identify who will act as the financing applicant. It is strongly recommended, although not required, that the Receiving System act as the financing applicant in most cases;
- If necessary, coordinate with the Receiving System to develop and execute consolidation agreement(s);
- Coordinate with Receiving System to obtain any necessary Local Agency Formation Commission (LAFCO), California Public Utilities Commission (CPUC), or other necessary approvals or permits, as well as any property rights necessary for the project;
- Conduct outreach and/or communication with customers;
- Submit system ownership information;
- Submit water rights information, as applicable;
- Submit application materials, including financial information, as required; and
- Where applicable, surrender domestic water supply permit upon completion of consolidation and dissolve the operating entity.

C. Responsibilities of the Receiving System.

For the Receiving System, the responsibilities may include, but are not limited to:

- Coordinate with Subsumed System(s) to identify who will act as the financing applicant. It is strongly recommended, although not required, that the Receiving System act as the financing applicant in most cases;
- Coordinate with the Subsumed System(s) to agree on how the consolidation will be structured and consider developing and executing a consolidation agreement(s) and other related documents;
- Coordinate with Subsumed System(s) to obtain any necessary LAFCO, CPUC, or other necessary approvals or permits, as well as any property rights necessary for the project;
- Submit complete TMF package, including ownership information;
- Submit application materials, including financial information, as required; and
- Ensure the project is operated to supply water to the Subsumed System(s)/entities.

The financing applicant must submit all other necessary elements of the DWSRF Program financing application, as described in the Policy and IUP. The financing recipient will be responsible for ensuring compliance with all financing agreement terms and conditions. The other system(s) will be responsible for complying with any financing terms and conditions passed through from the financing agreement.

D. Determining the Proper Financing Applicant.

Generally, either a Receiving or Subsumed Water System may act as the financing applicant/recipient, unless otherwise directed by the Division. In some instances, a County or other agency/entity may be the funding recipient on behalf of the Receiving and Subsumed systems. Only one system need apply per project—however, the application will require supplemental information from all systems involved. All requested information must be submitted with the application to avoid financing delays.

- Generally, for construction projects it is very strongly recommended that the Receiving Water System act as the financing applicant/recipient for a more streamlined financing process, as the financing agreement will include long-term obligations such as operation and maintenance of the surviving system and project.
- If the Subsumed System is the financing applicant/recipient, the Division may also require the Receiving System to be a party to the financing agreement or sign an assumption agreement in order to ensure ultimate compliance with any necessary terms and conditions.

E. System Ownership Information and Real Property.

Ownership of each water system must be clearly defined. Ownership documentation, including the type of ownership (e.g., mutual water company, special district, corporation), must be submitted by each water system involved in the project. For permitted systems that will be subsumed, the decision to consolidate and surrender its permit (for physical consolidations) must be properly authorized, according to the requirements and processes stated in the system's enabling statutes, articles of incorporation, and/or bylaws.

The financing applicant must also submit documentation of property rights, including any leases or liens on the project property, and coordinate with the owners of the other systems involved in the consolidation to ensure all necessary property rights for project construction, implementation, and long-term operations and maintenance are obtained.

If the applicant is requesting compensation for the acquisition of property by the Receiving Water System, the State Water Board will generally require an assessment of the fair market value of the property from a qualified third-party appraiser or through another methodology approved by DFA. Such assessments should account for assets, such as facilities, real property, and water rights, as well as liabilities, including factoring in the costs of necessary capital improvements and compliance projects that would be necessary if consolidation does not occur.

F. Technical Managerial Financial (TMF) Assessments and Financial Information.

The participating systems must submit required financial information and TMF assessments, including any material agreements (such as service, management, or operating agreements, or joint power authority agreements) and information regarding any material events.⁵

If the applicant is requesting a repayable loan to finance the consolidation project, the Division will require additional information needed to evaluate the Applicant's ability to repay the loan as requested in the application materials or otherwise requested by the Division.

Additional requirements may apply if the consolidation project involves privately owned water systems, including CPUC regulated utilities.

G. Approvals and Procedural Requirements.

The applicant should identify any procedural requirements that must be completed before the consolidation can occur. Timelines for these requirements should be determined early so they can be considered during the application process.

All of the following approvals may be required for a potential consolidation:

- CPUC approval;
- LAFCO approval;
- Special permits, if applicable;
- Board approval, shareholder approval, or voter approval (for each system).

If a LAFCO approval will be necessary for the project, or the project requires approval from the CPUC, such processes should be initiated as soon as possible with the county LAFCO and/or CPUC.⁶

⁵ Applicants must provide information about material events including, but not limited to, audit or grand jury findings, bankruptcy in the preceding 10 years, contractual or ratepayer/taxpayer disputes, contractual defaults, criminal proceedings, and litigation or disputes related to the system or project.

⁶ Applicants are encouraged to contact their county LAFCO for additional information on the process for seeking a change of organization, reorganization, or approval to extend services outside jurisdictional boundaries. Please be aware that for purposes of the LAFCO process, "consolidation" describes a specific type of change of organization, which differs from the defined term used throughout these Guidelines (Government Code section 56010 et seq.).

In some cases, such approvals may occur after a DWSRF financing agreement has been executed. In these cases, the financing agreement will include a condition requiring such approval.

H. Letter of Intent

Letters of Intent are required to be submitted as a part of a construction funding application. Letters of Intent from the owners/governing entities of the Receiving and Subsumed System(s) should demonstrate that the systems agree to consolidate.

I. Consolidation Agreements

A consolidation agreement is not required to be submitted as part of a funding application, but is a useful tool and may be legally required for consolidating systems for certain transactions. A consolidation agreement between the owners/governing entities of the Receiving and Subsumed System(s) sets forth the terms under which the systems agree to consolidate and the conditions for consolidation and on-going water service.⁷ The agreement may address all or most of the following issues: how the consolidation will be legally structured (e.g., merger or acquisition), transfer of system assets, customer transfer,⁸ real property, risk and liability, environmental and construction terms for any proposed project, financial terms, and any third-party approvals and permits.

The consolidation agreement is between the legal owner of the Receiving System and the legal owner of each Subsumed Water System.⁹ The State Water Board is not a party to the consolidation agreement between the systems.

If the consolidation includes merger or acquisition of the Subsumed System or substantially all assets of the system, then a merger or asset purchase agreement may be necessary. The terms of the merger or asset purchase

⁷ The term “consolidation agreement” is used throughout these Guidelines to refer to a legally binding agreement between the receiving and subsumed systems in which the systems agree to consolidate and establish terms of the consolidation, as described in this section. The form of the agreement may vary.

⁸ The Receiving Water System may use its standard agreement for new service connections, as appropriate. If the standard agreement contains terms that would conflict with the system’s obligations under the financing agreement, those terms must be altered or removed in the standard agreement.

⁹ Depending on the legal authority of a Subsumed Water System to agree to the consolidation with the Receiving Water System on behalf of its customers, the applicant may need to execute and submit consolidation agreement(s) with individual customers. For example, if individual customers in a mutual water company have individual deeded ownership in the water system, then a consolidation agreement(s) may be needed between each customer and the Receiving Water System.

agreement should be consistent with the other terms of the consolidation agreement(s), regardless of whether each is a stand-alone document. If any construction will be carried out by the non-financing participant, the Division will require an agreement passing through all applicable construction requirements. Where CPUC approval of the acquisition is required, the Division may condition disbursement of funds and start of construction on receipt of CPUC approval.

V. Terms and Conditions for Consolidation Agreements

Applicants should consider the following terms and conditions:

- A. **Legal Structure of Consolidation:** Consolidation can be legally structured as merger, acquisition, or other arrangement between the systems' owners/governing entities. Legal requirements may vary depending on the system ownership and types of legal entities involved in consolidation. The participants must reach an agreement with respect to how the consolidation will be structured, receive all necessary authorizations, and execute any corresponding agreements, such as merger agreement or asset purchase agreement.

- B. **Project Construction:**
 1. **Project property.** A description of any infrastructure or property that will be acquired, modified, enhanced, or built as part of the consolidation. This includes any tangible and intangible assets, such as maps and records, that will be part of the consolidation project.
 2. **Project Manager and Timeline.** A clear identification of which party is responsible for constructing the project and a schedule for the project delivery process.
 3. **Rights and Approvals.** Identify any easements, property, permits, and approvals necessary to construct the facilities.
 - i. Applicants are encouraged to describe which party will take lead on efforts to secure any rights and approvals necessary for the consolidation. This can include an agreement to coordinate and support these efforts from the other parties, as applicable.
 4. **Project construction terms.** As necessary to complete the consolidation project and to comply with the financing agreement, include any construction pass-through conditions as described below.
 - i. If a system other than the applicant will be responsible for construction of any project components, this should be identified as soon as possible. The system owner may be required to agree to certain construction pass-through financing conditions in a legally

binding agreement.¹⁰ See Attachment A for more information on potential pass-through requirements.

C. Terms of Transfer for customers and assets, and terms of service:

1. **Water supply permits.** Procedures and timing for Subsumed Water System's surrender of domestic water supply permits, where applicable. For consolidations resulting in one surviving system, the Subsumed System must consolidate and surrender its domestic water supply permit upon completion of a construction project.
2. **Water supply service.** Process and conditions for the Receiving Water System's supply of water to each Subsumed System (or, for projects serving each customer directly, process and conditions for the supply of water to each customer of the Subsumed System(s)). The Receiving Water System should agree to serve the Subsumed Water System(s)/entities for the useful life of the project. The agreement(s) to supply water may be conditioned on the Subsumed System/entity paying the agreed upon rates and complying with the Receiving Water System's standard rules of service.
3. **Asset transfer.** Timeline for any transfer of facilities and other assets from Subsumed System(s) to the Receiving Water System. This can include the assumption of financial obligations.¹¹
4. **Cross-connection / Disconnection.** Terms for disconnecting the Subsumed Systems' water supply facilities, and installation of any project required cross-connection or backflow protection devices.
5. **Destruction of disconnected water supply facilities.** This can include destruction of wells, where appropriate.
6. **Customer Transfer.** For physical consolidations where the Receiving Water System will bill each customer directly, describe the timeline for transfer of each customer to the Receiving Water System, and disconnection from the Subsumed System's service line. This may include procedures and agreements regarding transfer of billing and accounts receivable, if applicable. Please note, if this will require construction of new lateral connections on the customers' property, terms for providing the cost of such construction must be delineated.

¹⁰ This may be accomplished through the consolidation agreement, or a separate legally binding agreement between the systems. In cases where the non-financing participant is carrying out any construction, applicants should consult with the Division on the timing of execution and submittal of the consolidation or other legally binding agreement, as requirements vary by funding source.

¹¹ For repayable financing, additional terms may be required.

D. Ownership, operation, and maintenance:

1. **Identify responsible parties.** Clearly delineate areas of responsibility and facility ownership, operations, and maintenance for each party. If a system other than the financing recipient will be responsible for operations and maintenance of any portion of the project or system, the consolidation agreement, or similar document, should include the obligation to sufficiently and properly staff, operate and maintain those portions of the system for their useful life.

The consolidation agreements should not contain the following terms and conditions:

1. **Termination clauses.** Should not conflict with the express terms of the financing agreement. This includes termination at the option of either party without State Water Board consent, or termination by a certain date (without regard to project progress).
 - a. The term of the consolidation agreement should extend through the financing agreement term.
2. **Conditions precedent to the consolidation.** Should not use payment of ineligible or unauthorized costs as a condition precedent to the consolidation agreement's effectiveness. The consolidation agreement terms should be consistent with the financing agreement terms and conditions and any applicable state or federal statutes, regulations, and policies, such as the DWSRF Policy and IUP.

Attachment A to these Guidelines provides additional information on financing agreement requirements that may be applicable to both participants, including the non-financing Participant system (pass-through requirements).

VI. Mandatory Consolidation Projects

The State Water Board has authority to order mandatory consolidation under certain circumstances. Mandatory consolidation projects may include infrastructure improvements (e.g., pipelines, storage tank, new well, treatment) to either the Subsumed or Receiving System that are necessary for the consolidation to occur, and funding for reasonable connection fees.

As necessary and appropriate, the State Water Board may provide financial assistance for these mandatory consolidation projects through its existing funding programs.¹² Funding for mandatory or voluntary consolidation projects is subject to any capacity limitations set forth in the DWSRF Policy or IUP. The Deputy Director of DFA may reduce or limit reimbursement of connection fees if the infrastructure improvements provide capacity for the new service connections.

¹² See CHSC section 116682(e)(1).

VII. Consolidation of State Small Water Systems or Residences Served by Domestic Wells to a PWS

Projects to connect state small water systems¹³ or residences served by domestic wells to a PWS may be undertaken in a few different ways, depending on circumstances:

- For **planning projects**, the PWS or a local agency such as the County will be the planning financing recipient. Alternatively, planning work may be provided through a third party technical assistance provider.
- For **construction projects** the PWS will typically be the financing recipient.

In addition to typical construction application requirements (e.g., engineering, environmental, and financial documents) there are a few unique items that will apply to these projects, such as:

- **Letters of interest** from individual homeowners interested in participating in the project may be required prior to the State Water Board financing the full scope of planning work.
- Prior to construction, the Division may also require executed **right-of-entry agreements** or other agreements between the funding recipient and each homeowner committing to connect to the PWS.
 - These agreements must provide for required access, inspections, ownership and continued operation of constructed facilities. The Division may require the applicant to record these agreements.
 - If the homeowners will complete work on private property that is supported by State Water Board financing there may be additional provisions to pass through, for example related to bidding and construction.

The Division strongly encourages sharing a draft template of these items prior to finalizing with homeowners, as all such documentation must be in a form satisfactory to the Division.

Project proponents should refer to the DWSRF IUP and Policy and consult with Division staff for the most current information on available grant financing opportunities and requirements for necessary work on private property. Other documentation and requirements may apply if the project will involve State Water Board financing under a different program.

¹³ CHSC section 116275(n) defines “state small water system” as a system for the provision of piped water to the public for human consumption that serves at least 5, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

Project proponents should apply many of the same concepts emphasized throughout this Appendix around early and regular coordination between key stakeholders including the DDW, Division, LAFCO, and CPUC, if applicable.

ATTACHMENT A: POTENTIAL PASS-THROUGH CONDITIONS

Project Construction Obligations

If any construction under the financing agreement will be carried out by the non-financing participant (such that the non-financing participant is acting as a sub-Recipient) the Division will require the recipient to pass-through all applicable construction requirements from the financing agreement.

Below are examples of the types of pass-through conditions that may be required if the non-financing participant will carry out construction or installation of ANY components under the project scope:

- Express obligation for **completing construction** of specific project components (identifying responsible party, scope, timeline, and costs).
 - Example: (If financing agreement has already been issued/executed): *[Non-financing Participant name] shall be responsible for constructing [project component]. [Non-financing Participant name] agrees to ensure all construction is carried out in compliance with the scope of work and all applicable terms and conditions in the attached financing agreement (issued by the State Water Board to [financing recipient name]/executed by and between the State Water Board and financing recipient name). The [financing recipient name] agrees to request reimbursement for construction costs eligible under the financing agreement, contingent on submittal by [Non-financing Participant name] of any documentation or information needed for final budget approval or request for reimbursement under the financing agreement.*
- For DWSRF financing, include **federal and state requirements** identified in the Financing Agreement and the General Terms and Conditions posted online (https://www.waterboards.ca.gov/water_issues/programs/grants_loans/general_terms.html).
- **Access, Inspection, and Public Records**: *The [Non-financing Participant NAME] must ensure that the State Water Board, the State Auditor, or any authorized representative of the forgoing, [and, if any federal funding, the United States Environmental Protection Agency, the Office of Inspector General, any member of Congress, or any authorized representative of the foregoing,] will have safe and suitable access to the Project site at all reasonable times during the useful life of the Project, and shall have access at reasonable times to records relevant to the Project for the records retention period specified in the financing agreement.*
- Pass-through conditions may include compliance with the following, depending on the funding source:
 - State labor laws
 - Davis-Bacon
 - American Iron and Steel

- Build America, Buy America
- Disadvantaged Business Enterprise Program
- Competitive Bidding
- Non-Discrimination
- Insurance and Bonding
- Signage and acknowledgments
- Prohibition on use of debarred contractors
- Environmental mitigation and monitoring during construction
- Notice of discovery of cultural resources or endangered species during construction, and other notice requirements
- Other applicable state and federal requirements listed in the financing agreement.

Agreement Drafting Tip: Generally, the pass-through agreement should be executed after issuance of the financing agreement, so it can reference the terms and conditions included in the financing agreement directly. Given that the pass-through construction requirements must align closely with the terms of the financing agreement and funding source requirements, systems should coordinate closely with the Division on the contents of the agreement and timing of execution.

Budgets: The financing recipient will be responsible for submitting a final budget approval package to the Division under the financing agreement. No construction funds will be disbursed until a final budget approval has been issued by the Division for the construction work.

Ownership, Operation, and Maintenance Obligations

A non-financing Participant may be responsible for long-term ownership, operations, and maintenance of certain project components. This could occur when:

- The Subsumed Water System is the financing recipient, but the Receiving System will continue to operate the combined system.
- The Receiving System in a master meter consolidation is acting as financing recipient, but the project includes improvements beyond the meter on the Subsumed System's property.

In such cases, the Division may require the non-financing participant to assume certain obligations under the Financing Agreement, including the following:

- Express obligation for long-term **operation and maintenance** of specific project components (identifying responsible party, scope, duration, and costs).
 - Example: **Operations and Maintenance:** *The [Non-financing Participant NAME] agrees to sufficiently and properly staff, operate, and maintain any facilities and structures it owns that are constructed or improved as part of the Project for their useful life.*

- Conditions related to **long-term ownership, record keeping, and non-discrimination** (if the participating entity other than the financing recipient will own any project components).
 - Examples: **Continuous Use of Project, No Sale, Transfer of Ownership, or Disposal of Project**: *The [Non-financing Participant NAME] agrees that it will not abandon, substantially discontinue use of, lease, sell, transfer ownership of, or dispose of all or a significant part or portion of the Project during the Useful Life of the Project without prior written approval of the State Water Board. Such approval may be conditioned as determined to be appropriate by the State Water Board, including a condition requiring repayment of any State Water Board financing used to improve such portion of the Project together with accrued interest and any penalty assessments that may be due.*
- **Records Retention**: *The [Non-financing Participant NAME] must maintain records relevant to the Project for the records retention period specified in the financing agreement.*
- **Non-Discrimination**: *The [Non-financing Participant NAME] must maintain compliance with the state and federal non-discrimination requirements specified in the financing agreement.*
- Other **applicable state and federal conditions** listed in the financing agreement, depending on the funding source.