

**Frequently Asked Questions (FAQ)
Drinking Water State Revolving Fund (DWSRF) Program
Legal Opinion Requirements**

Applicants should have their legal counsel review these FAQs prior to submitting an application for DWSRF financing.

1. When is the legal opinion submitted to the State Water Board's Division of Financial Assistance (Division)?

The Division's legal counsel will coordinate directly with the applicant's legal counsel(s) prior to execution of the DWSRF financing agreement. If the applicant has material bonds outstanding, Division counsel will coordinate with the applicant's bond counsel, as well. Division counsel will provide the applicant's legal counsel with the proposed form of DWSRF agreement and draft form of opinion. The applicant's legal counsel will review the documents, and discuss changes to the draft language with Division counsel if needed. The Division will use the final draft agreement language to prepare the agreement for signature. When the applicant signs and returns the agreement, the applicant's legal counsel(s) will sign and return the finalized opinion with the signed DWSRF financing agreement.

2. When should applicants expect to be contacted by the Division's legal counsel?

Your DWSRF Project Manager will coordinate with Division counsel to ensure that your counsel is contacted at the appropriate time, typically two to four months prior to execution of the financing agreement. However, if there are any obvious complicating factors your local counsel may be contacted earlier in the process.

3. For construction financing, what issues will need to be addressed in the required legal opinion?

For construction financing applications, the legal opinion addresses a number of points, including the following:

- The validity and enforceability of the DWSRF financing agreement and the supporting resolutions
- No conflicts with applicable laws and material obligations
- No untrue, misleading, or incomplete representations
- No pending or existing litigation or disputes, including rate payer disputes
- The applicant has necessary property rights in place

Where the applicant has material bond debt (e.g., with the same pledged revenues or funds), a no conflicts opinion from bond counsel will be required.

4. What about planning financing applications?

The required legal opinion will address the same items outlined above, except the issue of property rights.

5. Is a bond counsel opinion required for planning financing? Eligible small disadvantaged communities applying for planning financing that are offered 100% forgiveness of principal or grant are not required to provide a bond counsel opinion (even if there is material debt).

6. What are common legal complications that applicants encounter:

- **Regarding litigation or disputes?**

Any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) that may detrimentally affect the applicant's:

- Existence
- Payment source
- Legal authority to use the proposed pledged revenues or funds
- Legal authority to enter into the proposed DWSRF financing agreement
- Ability to meet its obligations under the DWSRF financing agreement.

- **Regarding property rights?**

- Any conditions (on leases, easements, or other agreements) that might affect the applicant's ability to access, construct, operate, maintain, and allow for outside inspections of the project throughout the useful life of the DWSRF financing agreement.
- Cases where there is inadequate title documentation and action is needed to ascertain ownership.

- **Regarding the pledged revenues or funds?**

Issues that might affect the ability of the applicant's legal counsel to certify that the use of the pledged revenues, security interest, or funds, as described in the DWSRF financing agreement, would constitute a legal, valid, and binding use.

- Proposition 218 compliance
- Necessary resolutions/certifications

- **Regarding existing debt?**

Conditions, restrictions, or conflicts that prohibit the applicant from agreeing to or meeting its obligations under the DWSRF financing agreement. For example:

- Consent requirements
- Coverage or reserve requirements
- Closed indenture
- Other material conditions

If you anticipate any issues with providing the required information, please discuss with your DWSRF Project Manager. A discussion directly with the Division's legal counsel can be arranged as needed.