

**STATE
WATER
RESOURCES
CONTROL
BOARD**



**CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY**



Policy for Implementing the Drinking Water State Revolving Fund



Amended
February 5, 2019

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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POLICY FOR IMPLEMENTING THE DRINKING WATER STATE REVOLVING FUND

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https://www.waterboards.ca.gov/drinking_water/services/funding/DWSRF_Policy.html

LIST OF ACRONYMS AND ABBREVIATIONS

AIS	American Iron and Steel
CEQA	California Environmental Quality Act
CPUC	California Public Utilities Commission
CWS	Community Water System
DAC	Disadvantaged Community
DBE	Disadvantaged Business Enterprise
DWSRF	Drinking Water State Revolving Fund
GWUDI	Ground Water Under the Direct Influence
IUP	Intended Use Plan
LAFCO	Local Agency Formation Commission
MCL	Maximum Contaminant Level
MHI	Median Household Income
NEPA	National Environmental Protection Act
NOE	Notice of Exemption
O&M	Operation and Maintenance
PRF	Pledged Revenue and Funds
PWS	Public Water System
SDAC	Severely Disadvantaged Community
SDWA	Safe Drinking Water Act
SERP	State Environmental Review Process
SRF	State Revolving Fund
TMF	Technical, Managerial, and Financial Capacity
UCC	Uniform Commercial Code
U.S. EPA	United States Environmental Protection Agency

I. INTRODUCTION

This Policy is adopted for the State Water Resource Control Board's (State Water Board) implementation of the 1996 Amendments to the federal Safe Drinking Water Act (SDWA), which created the Drinking Water State Revolving Fund (DWSRF) program. The program is intended to provide financial assistance in perpetuity using federal and state funds. The DWSRF provides various types of assistance for Public Water Systems (PWS), including projects that: (1) address or prevent future public health risk problems, (2) are needed to comply with the SDWA, and (3) assist those most in need on a per household affordability basis. The federal DWSRF provides Capitalization Grants to states that may be used to provide loans and other assistance to PWSs. The DWSRF program was initially implemented by the California Department of Health Services, and subsequently transferred to the State Department of Public Health. As of July 1, 2014, the program is implemented by the State Water Board.

The California statutory basis for the DWSRF is established in Sections 116760 – 116762.60 of the Health and Safety Code.

Notwithstanding any provision of this Policy, the State Water Board will implement the DWSRF program consistent with federal law and policy, and state law and policy.

The provisions of this Policy are effective February 5, 2019, unless otherwise required by federal or state statute, guidance, regulation, or agreement.

II. PURPOSE AND OBJECTIVE

Under federal and state law the primary purpose of the DWSRF is to assist PWSs in financing the cost of drinking water infrastructure projects needed to achieve or maintain compliance with SDWA requirements and to further the public health objectives of the SDWA.

III. HUMAN RIGHT TO WATER

Section 106.3 of the Water Code provides that it is the policy of the state that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. This section requires the State Water Board to consider this state policy when adopting policies and grant criteria. The State Water Board has considered the provisions of Section 106.3 of the Water Code in establishing this Policy.

IV. CLIMATE CHANGE

The State Water Board also seeks to reduce the effects of climate change and to promote sustainable water resources for future generations. In 2017 the State Water Board adopted Resolution No. 2017-0012 specifying a range of actions the State Water Board's divisions and offices will take to implement its climate change program. This Policy is designed to support those efforts.

V. DEFINITIONS

The following words where used in this Policy shall have the meaning hereafter ascribed to them:

“Acceptable Result” means the project that, when constructed, solves the problem for which the project was placed on the Comprehensive List, ensures the owner and operator of the improved or restructured PWS shall have long-term TMF to operate and maintain the PWS in compliance with state and federal safe drinking water standards, can provide a dependable source of safe drinking water long-term, and is both short- term and long-term affordable, as determined by applicable regulations or policies adopted by the State Water Board.

“Allowance” or “Soft Costs” means an amount of money for eligible planning, design, value engineering, construction management, environmental, and administration costs of the project.

“Applicant” means the Legal Entity with the authority to enter into contracts and agreements and incur debt on behalf of the community and/or PWS to be served by the project being financed by the DWSRF.

“Authorized Representative” means the duly appointed member, official, or employee of the Applicant/Recipient that has the authority to represent the water system and sign documents pertaining to the funding or financing application, execute the Financing Agreement, and submit disbursement requests.

“Bridge Financing” means interim financing to cover Eligible Project Costs until DWSRF financing for the project is received from the State Water Board.

“Capitalization Grant” means federal DWSRF funds granted to the State Water Board by the United States Environmental Protection Agency (U.S. EPA) in a particular year pursuant to certain terms and conditions.

“CEQA” means the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code and including the regulations and guidelines adopted by the California Resources Agency to implement the Act).

“Community Water System” or “CWS” means a PWS that: 1) serves at least 15 service connections used by yearlong residents of the area served by the system, or 2) regularly serves at least twenty-five (25) yearlong residents of the area served by the system.

“Completion of Construction” means the date that the work of building and erection of the project is substantially complete.

“Completion of Planning/Design” means that the Division has accepted the deliverables identified in the planning/design Financing Agreement.

“Comprehensive List” means a list that consists of all planning/design and construction projects for which at least one portion of an application has been received, including sufficient information for an initial ranking.

“Consolidation” means a project that involves the restructuring of two or more PWSs into a single PWS. (*Appendix A* contains additional guidance)

“Construction Financing” means financing to cover some or all of the cost of the construction of a water system infrastructure project, including but not limited to planning, preliminary engineering, design, treatment systems, water sources, interconnections, consolidations, acquisition of water systems, purchase of land or equipment, and extending service to residents currently served by individual wells or surface water sources.

“Contingency” means the amount budgeted for unforeseen costs.

“Cost-effective” means achieves an Acceptable Result at the most reasonable cost.

“Disadvantaged Community” or “DAC” means the entire service area of a CWS in which the MHI is less than eighty percent (80%) of the statewide median household income.

“Division” means the Division of Financial Assistance within the State Water Board.

“Eligible Start Date” means the date established by the Division upon approval of the financing application. Construction costs incurred after this date are eligible for financing. For Construction Financing the Eligible Start Date may not be earlier than a fundable project’s notice to proceed date or the start of project implementation.

“Eligible Project Cost” means those costs of a project that are deemed by the Division to be eligible as match or for reimbursement from the DWSRF pursuant to federal and state laws, rules, regulations, policies, and guidelines.

“Eligible System” means any of the following:

- Privately-owned and publicly-owned CWSs or Non-Profit Non-CWSs
- CWSs created by the Project that meet the federal requirements for new systems
- Systems referred to in Section 1401(4)(B) of the SDWA for the purposes of point of entry or central treatment under Section 1401(4)(B)(i)(III)

“Environmental Document” means a Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report (EIR), Addendum, Supplemental or a Subsequent document prepared in accordance with CEQA and associated supporting documents showing compliance with federal environmental laws, consistent with the State Environmental Review Process.

“Executive Director” means the Executive Director of the State Water Board.

“Existing Debt” means the Applicant’s existing material debt.

“Expanded Small Community Water System” means a CWS that serves more than 3,300 service connections, but no more than 6,600 service connections; or a yearlong population of more than 10,000 persons but no more than 20,000 persons.

“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 DWSRF financing and the repayment, if any. This document may be a Loan, a grant, or another financing instrument.

“Fundable List” means a list of projects in the IUP that are expected to receive assistance from the DWSRF in a particular state fiscal year.

“Ground Water Under the Direct Influence” or “GWUDI” means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae or large diameter pathogens such as Giardia lamblia or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity or pH which closely correlate to climatological or surface water conditions (CCR, Title 22, Sec. 64651.50).

“Intended Use Plan” or “IUP” means the annual document that the State Water Board submits to U.S. EPA, after public review and comment, which contains the business plan for the DWSRF and identifies the projects that the State Water Board anticipates funding during the year.

“Legal Entity” means an entity that is duly formed and operating under the laws of this State.

“Loan” means and includes any repayable financing instrument, including a loan, bond, installment sale agreement, note, or other evidence of indebtedness.

“Median Household Income” or “MHI” means the household income that represents the median value for the service area of a PWS. For consolidation projects, the MHI of the service area of the individual participating PWS(s) are used. For projects involving the extension of water from an existing PWS to geographical areas not served by a PWS (including the service area of one or more State Small Water Systems or parcels served by private wells or surface water sources), the MHI of the existing PWS’s service area is used.

“Non-Community Water System” or “Non-CWS” means a PWS that is not a CWS.

“Non-Profit” means exempt from taxes under Section 501(c) of the United States Internal Revenue Code.

“Non-Repayable Financing” means and includes any form of non-repayable financing, whether in the form of grant, principal forgiveness, or other form of financing instrument.

“Operating Agreement” means the Operating Agreement pursuant to Section 35.3545 of title 40 of the Code of Federal Regulations. (see *Appendix B*)

“Planning/Design Financing” means financing to cover some or all of the cost of preliminary activities necessary to construct a project including, but not limited to, legal costs, studies, planning, preliminary engineering, and design for a project.

“Pledged Revenue and Funds” or “PRF” means one or more existing sources of revenue and/or funds or collateral pledged by the Applicant as security for DWSRF financing.

“Primary Drinking Water Standard” means those standards as defined pursuant to Section 116275 et seq. of the Health and Safety Code.

“Private Lateral” means the water pipe from a service connection (as defined in Section 116275 of the Health and Safety Code) to a residential, commercial, institutional, or industrial structure.

“Project” means cost-effective facilities for the construction, improvement, or rehabilitation of a PWS. It may include the planning and design of facilities, annexation or consolidation of water systems, source water assessments, source water protection, and other activities specified in the SDWA.

“Public Agency” means any city, county, district, joint powers authority, or other political subdivision of the state that owns or operates a PWS.

“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, if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals, pursuant to the SDWA.

“Recipient” means a Legal Entity that enters into a DWSRF Financing Agreement with the State Water Board.

“Safe Drinking Water Act” or “SDWA” means the Federal Safe Drinking Water Act (42 U.S.C. § 300f et seq.), including any amendments thereto.

“Service Area” means all of the geographical area that is currently served by a PWS.

“Severely Disadvantaged Community” or “SDAC” means the entire service area of a CWS in which the MHI is less than sixty percent (60%) of the statewide median household income.

“Small Community Water System” or “Small CWS” means a CWS that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons.

“Soft Costs” or “Allowance” means an amount of money for eligible planning, design, value engineering, construction management, environmental, and administration costs of the Project.

“State” means the State of California.

“State Small Water System” means a system for the provision of piped water to the public for human consumption that serves at least five, 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.

“State Water Board” means the State Water Resources Control Board.

“Technical, Managerial, and Financial Capacity” or “TMF” means the ability of a PWS to plan for, achieve, and maintain long term sustainable compliance with drinking water standards, thereby ensuring the quality and adequacy of the water supply. (see *Appendix C*)

“Urban Water Supplier” means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually, pursuant to Section 10617 of the California Water Code.

“Useful Life” means the estimated period of time over which the funded facility will serve its intended purpose in a cost-effective manner from the estimated initiation of operation date.

“U.S. EPA” means the United States Environmental Protection Agency.

“Waterworks Standards” means regulations adopted by the State Water Board entitled “California Waterworks Standards” (Chapter 16 (commencing with Section 64551) of Division 4 of Title 22 of the California Code of Regulations).

VI. PROGRAM MANAGEMENT

A. Intended Use Plan and Capitalization Grant Applications

1. Annually, the Division will prepare an IUP for the State Water Board’s consideration and submittal to the U.S. EPA. The State Water Board may establish various requirements, conditions, and incentives in the IUP, and may reserve funds for selected classes or types of projects. The IUP will provide information necessary to satisfy U.S. EPA’s requirements including, but not limited to, the availability of and applicable limitations on Non-Repayable Financing, equivalency requirements, the application of financing service charges, set-aside allocations and their planned uses, as well as a Fundable List of projects eligible to receive funding based on their priority and the availability of funds for the year.
2. The Executive Director may amend an IUP adopted by the State Water Board for good cause. The Executive Director must conduct a public review before amending the IUP.
3. The Executive Director or designee may apply for and accept Capitalization Grants and approve amendments to the Capitalization Grants.
4. The Deputy Director of the Division may negotiate and submit workplans for Capitalization Grants to U.S. EPA for review and approval.
5. The Executive Director or designee may amend the Operating Agreement.

B. Comprehensive List

1. Purpose of the Comprehensive List

The purpose of the Comprehensive List is to catalog and identify potentially eligible projects for a Fundable List. As the Division receives DWSRF applications from Applicants, it will assign to each project, in consultation with the Division of Drinking Water, a category from Section VI.B.2.a of this Policy. Placement of a project on the Comprehensive List does not constitute a commitment to provide financing. However, projects included on the Comprehensive List may be considered for a Fundable List based upon the criteria included in this Policy.

2. Priority System

To the maximum extent practicable, priority for funding and placement on the Fundable List will be given to projects which: 1) address the most serious risk to human health, 2) are necessary to ensure compliance with the requirements of the SDWA, and 3) assist systems most in need on a per household basis. Projects are ranked by the categories and bonus score established below to achieve these objectives.

a. Categories

Each project will be assigned to one of the following categories:

Category A - Immediate Health Risk

- Documented waterborne disease outbreaks attributable to the water system.
- Water systems under a court order to correct SDWA violations or to correct water outage problems.
- Total coliform Maximum Contaminant Level (MCL) violations attributable to active sources contaminated with coliform bacteria (e.g., fecal, E. coli, or total coliform).
- Severe domestic water supply outage(s) posing an imminent threat to public health and safety.
- The distribution of water containing nitrates/nitrites or perchlorate in excess of the MCL.

Category B - Untreated or At-Risk Sources

- Surface water or GWUDI sources that are untreated, not filtered, or have other filtration treatment deficiencies that violate federal or state regulations.
- Non-GWUDI groundwater sources that are contaminated with fecal coliform or E. coli and are inadequately treated.
- Uncovered distribution reservoirs.

Category C - Compliance or Shortage Problems

- Water quantity problems caused by source capacity, or water delivery capability that is insufficient to meet existing demand.
- The distribution of water containing chemical or radiological contamination in violation of a state or federal primary drinking water standard (other than nitrate/nitrite or perchlorate).
- Total Coliform Rule violations for reasons other than source contamination.

Category D - Inadequate Reliability

- Non-metered service connections, or defective water meters.
- CWSs, and PWSs owned by public schools, with a single source and no backup supply.
- Distribution reservoirs with non-rigid covers in active use.
- Disinfection facilities that lack needed reliability features, such as chlorine analyzers or alarms.
- Violations of the Waterworks Standards related to disinfection.

Category E - Secondary Risks

- The distribution of water that exceeds secondary drinking water standards.
- The distribution of water in excess of a published chemical notification level.
- The distribution of water which has exceeded a primary drinking water standard in one or more samples but has not violated a running average standard.

- A standby groundwater source that exceeds a primary drinking water standard.
- Violations of the Waterworks Standards (other than those already covered above).

Category F - Other Projects

- Deficiencies attributable to the water system that address present or prevent future violations of health-based standards (other than those already covered above).

b. Bonus Score

Projects with a higher aggregate bonus score will receive priority over other projects within the same category. A project will be awarded one (1) point per each of the following:

- Project benefits a disadvantaged community or a severely disadvantaged community
- Project will result in Consolidation or extension of service to a disadvantaged community or a severely disadvantaged community that is not being served by a PWS

3. Updating the Comprehensive List

The Division will generally update the Comprehensive List quarterly. The Division may update the Comprehensive List more frequently if necessary or less frequently if there are no new projects to be added. The Comprehensive List will be posted promptly by the Division on the State Water Board's website after it has been updated.

4. Project Removal from the Comprehensive List

- a. The Division will monitor the progress of project applications on the Comprehensive List to ensure that Applicants are proceeding expeditiously with their projects.
- b. The Deputy Director of the Division will remove any project from the Comprehensive List when:
 - i. The project has been on the Comprehensive List for at least four (4) consecutive quarters, and the Applicant has been non-responsive or has not requested that the project remain on the Comprehensive List;
 - ii. The State Water Board so instructs;

- iii. The project has received DWSRF financing or alternative financing for the project;
 - iv. The water system ceases to exist or becomes ineligible;
 - v. The problem no longer exists or has been corrected; or
 - vi. The Applicant requests that the project be removed.
- c. Projects that are removed from the Comprehensive List may be added again in the future.

C. Fundable List

The purpose of the Fundable List is to identify eligible projects that the State Water Board intends to finance during the state fiscal year.

1. Annual Fundable List

- a. All projects submitted to the Division for DWSRF and its complementary funding sources will be evaluated for placement on the Fundable List. A project must be on the Fundable List to receive financing but placement on the Fundable List does not guarantee financing. A Financing Agreement will be executed for a project on the Fundable List only if the project meets all applicable eligibility requirements and sufficient funds are available.
- b. Annually all applications, with the exception of small DAC and small SDAC applications, will be ranked based on their priority described in VI.B.2 and their readiness to proceed to financing during the next state fiscal year.
- c. Small DAC and small SDAC projects are considered fundable at any time provided they meet all eligibility requirements, and will automatically be added and remain on the Fundable List until:
 - i. The project is funded;
 - ii. The problem ceases to exist, or the application is determined to be ineligible for funding;
 - iii. The State Water Board instructs that it be removed; or
 - iv. The Applicant requests that its application be removed.

2. Development of the Fundable List

- a. The Division will sort all ranked planning/design and construction projects on the Comprehensive List, from highest to lowest ranking for potential placement on an annual Fundable List.

- b. The Division will select the highest ranked projects for the Fundable List.
- c. The Fundable List will include projects with the same ranking so long as the aggregate financing amount for the projects is consistent with the funding capacities determined in the IUP.

3. Funding of Projects

- a. All projects on the Fundable List are fundable at any time during the fiscal year covered by the IUP provided they meet all eligibility requirements, are not bypassed, and sufficient funds are available. The Division will monitor progress of all projects on the Fundable List to ensure that Applicants are proceeding expeditiously to construction or implementation.
- b. The Division will review the project applications on the Fundable List with the objective of executing agreements quickly and efficiently giving priority to projects for Small Water Systems serving DACs and SDACs, as well as those projects that address high ranking public health priorities.
- c. The Division may limit funding to costs necessary to enable a PWS to meet primary drinking water standards, as defined in the Health and Safety Code, commencing with Section 116270.
- d. Projects on the Fundable List that are not financed by the end of the state fiscal year will be carried over to the subsequent year's Fundable List, unless directed by the State Water Board or the Applicant withdraws its application.

D. Project Bypass

- 1. The Deputy Director of the Division, or designee, may bypass a project on the Fundable List if it is determined that the project is not ready to proceed to financing.
- 2. The Deputy Director of the Division, or designee may add a project from the Comprehensive List to the Fundable List if:
 - a. The project is expected to proceed to financing; and
 - b. The aggregate funding amount is consistent with the funding capacities determined in the IUP.

E. Interest Rate and Other Charges

1. Generally, the interest rate for DWSRF Financing Agreements will be fifty percent (50%) of the average interest rate paid by the State on general obligation bonds issued in the prior calendar year, rounded up to the nearest one-tenth of one percent (0.1%). The interest rate will apply to all Loans as of the date the Division initiates preparation of the Financing Agreement document for routing and signoff or the State Water Board approves the financing, whichever is first.
2. The State Water Board may identify a lower rate for a specific type or category of eligible project in the IUP. Reduced interest rates are also provided for certain DACs and SDACs in Section VIII.B of this Policy.
3. The State Water Board will utilize the IUP to establish any administrative service charges, drinking water small community emergency grant charges, financing charges, and incentives. The administrative service charge provides funding for administration of the DWSRF program, and the small community emergency grant charge provides a source of grant funding for small DAC and small SDAC emergency drinking water projects. Where a Financing Agreement includes any such charge, the interest rate is correspondingly reduced so that the combined payment of principal, interest, and charge(s) is the same regardless of whether a charge is applied.

F. Report to the U.S. EPA

The Division will prepare and send an Annual Report to the U.S. EPA that describes how the DWSRF program met the goals and objectives identified in the previous year's IUP. The report will be posted on the State Water Board's website.

G. Report to the Legislature

At least once every two years, the Division will prepare a report to the California Legislature regarding the implementation of the DWSRF Program. The report will be posted on the State Water Board's website.

VII. MATCH FINANCING

The State must contribute capital into the DWSRF equal to twenty percent (20%) of the federal capital contributions (i.e., Capitalization Grants). The State Water Board may offer incentivized financing to Recipients that contribute matching funds through their Financing Agreement.

A. Availability

The State Water Board will determine at least once each year whether to offer match financing. This determination will normally be made in the IUP.

B. Match Contribution

The Division will normally set the Applicant's match contribution for the project at the proportional level to meet the state's required match. Match financing may be used regardless of whether federal capitalization grant monies are ultimately used for the remainder. Where the current interest environment renders this approach infeasible, the Division may set the Applicant's match contribution at an amount resulting in an imputed interest rate that is competitive with the current DWSRF interest rate for Construction Financing.

C. Match Financing Resolution

An Applicant seeking match financing must submit a resolution passed by the Applicant's governing body, stating the Applicant's intent to provide the matching funds in the amount and at the times necessary to complete the project. *Appendix D* contains a model resolution.

D. Match Financing Terms

The interest rate on match Financing Agreements will be zero percent (0%). The principal amount of the Financing Agreement includes both the amount received from the State Water Board and the matching funds contributed by the Recipient. The State Water Board may elect to charge a fee to cover the costs of obtaining federal funds. Planning/design Financing Agreements cannot utilize match financing.

E. Disbursements

The Recipient must certify that it has paid at least the match portion of incurred Eligible Project Costs within a particular claim for reimbursement. Such certification must include documentation of payment acceptable to the Division. Once the Division has confirmed payment of the match portion, the remainder of the incurred Eligible Project Costs will be reimbursed.

VIII. ASSISTANCE FOR DISADVANTAGED AND SEVERELY DISADVANTAGED COMMUNITIES

- A. A publicly or privately owned Small CWS or Expanded Small CWS that serves a DAC or SDAC may be eligible for Non-Repayable Financing (i.e. principal forgiveness) for a planning/design or construction project if the system cannot afford to repay all or part of the project's Loan. The criteria for determining the system's ability to afford project financing and the Non-Repayable Financing criteria and terms will be included in the IUP.

Similarly, a PWS owned by a public school district may be eligible for Non-Repayable Financing (i.e. principal forgiveness) for a planning/design or construction project. Notwithstanding any other term of this Policy, a PWS owned by a public school district is determined to serve a SDAC and is deemed to have no ability to repay any financing. The Non-Repayable Financing criteria and terms for PWSs owned by public school districts will be included in the IUP.

- B. A publicly or privately owned Small CWS that serves a DAC or SDAC is determined to have financial hardship because of their system size and their general lack of economies of scale to financially operate and maintain their water systems. Therefore, a Small CWS is eligible for zero percent (0%) interest rate Planning/Design Financing and Construction Financing.
- C. An Eligible System that serves a DAC or SDAC is eligible for a repayment term of up to forty (40) years for Construction Financing, as provided in Section XI.C.2.

IX. WATER RATE STUDIES

Recipients of Planning/Design Financing may be required to complete a water rate study to cover the costs of operating and maintaining the water system, including the proposed construction project, for at least a five (5) year period from the start of construction. The rates will generally be expected to be adopted no later than the completion of a planning/design project.

Prior to execution of a construction Financing Agreement, an Applicant must demonstrate, to the satisfaction of the Division, water rates sufficient to operate and maintain the water system, including the proposed construction project, for a period of at least five (5) years from the anticipated Completion of Construction. Any rate increase determined to be necessary by the Deputy Director of the Division must occur prior to the execution of the construction Financing Agreement.

X. PLANNING/DESIGN FINANCING

An Applicant must submit all documents noted below, unless otherwise authorized by the Deputy Director of the Division for good cause, to obtain Planning/Design Financing. The Division may require that the Applicant submit additional information or certifications necessary or useful to ensure that the financing complies with state and federal requirements. *Appendix F* contains the application for Planning/Design Financing. The Division will accept partial applications but will process complete applications ahead of incomplete applications.

- A. Planning/Design Application Requirements
 - 1. General Information Package

This package includes basic Applicant and project information.

2. Technical Package

a. A Plan of Study which includes the following components:

- i. Description of the water quality and/or quantity problem(s) to be addressed (including information about existing or pending enforcement actions)
- ii. Scope of Work, prepared with the following requirements under consideration:
 - (A) The Applicant must evaluate all feasible alternatives, including consolidation, prior to or during the planning/design project. The evaluation must compare estimated capital, operations and maintenance (O&M) costs over the Useful Life of each alternative.
 - (B) The Applicant must obtain approval from the Division on the selected alternative prior to developing plans and specifications for the eventual construction project. The Division will consult with the Division of Drinking Water, if necessary, to determine if the selected alternative will address the water quality and/or quantity problem(s).
 - (C) The anticipated environmental impact of each alternative must be evaluated, as required by CEQA/NEPA. Prior to the development of plans and specifications for the eventual construction project, the Applicant is expected to consult with the agencies responsible for implementing local, state, and federal statutes and authorities, and incorporate any recommended design features and measures from those agencies into the project.
- iii. Planning/design project budget
- iv. Planning/design project schedule (including deliverables and submittal dates)

b. Water Metering

Applicants must certify compliance with water metering requirements of Section 529.5 of the Water Code or that the water metering requirements are not applicable to the Applicant¹.

3. Environmental Package

- a. This package includes information and documentation necessary to evaluate applicable state and federal environmental requirements.

¹ Projects involving the installation of water supply meters are not required to meet these requirements when applying for financing.

- b. Applicants must provide complete and adequate project specific Environmental Documents to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet federal environmental review requirements. In accordance with the Operating Agreement, the State Water Board uses the State Environmental Review Process (SERP) to fulfill these requirements. (see *Appendix O*)

4. Financial Security Package

a. General Requirements

- i. The Division will review financial documents to determine the Applicant's credit capacity as well as the capacity to sustainably operate and maintain its water system.
- ii. The Division will apply the Credit/Financial Guidelines to review each Financial Security Package or request for securing additional debt (see *Appendix E*).
- iii. If the Applicant's operating budget is unable to support DWSRF financing, the Division will work with the Applicant to determine alternative methods of financing the planning/design project, if feasible.

b. Coverage

- i. The Recipient must comply with coverage covenants in existing material debt or with the coverage requirements set forth below, whichever covenants or requirements provide greater coverage. The Division will employ appropriate credit criteria to evaluating all pledged sources of repayment.
- ii. The Recipient's pledged sources of repayment for the Loan, in any fiscal year following the fiscal year in which the project is completed and until the Loan is repaid, must be at least the sum of (a) 1.2 times the total senior (D^{senior}) and parity (D^{parity}) annual debt service payable from the pledged sources and (b) 1.0 times the subordinate ($D^{\text{subordinate}}$) annual debt service payable from the pledged sources, as reflected in the following formula, unless the Division determines that credit considerations allow a different debt service coverage requirement:

$$PRF \geq [1.2(D^{\text{senior}} + D^{\text{parity}}) + 1.0(D^{\text{subordinate}})]$$

- iii. The Applicant may pledge revenues, assessments and/or special taxes to repayment of a Loan.
- iv. The Division may apply to the DWSRF transaction the additional debt test and rate covenant as set forth in an Applicant's existing master trust indenture or similar debt document.

c. Additional Debt

- i. The State Water Board normally expects the DWSRF debt obligation's lien status to be on parity with the Applicant's senior/first tier debt obligations, unless the Division determines that credit considerations support a lower lien status.
- ii. Additional obligations secured by the PRF may be senior to DWSRF obligations in the following circumstances:
 - (A) The DWSRF Financing Agreement provides for one hundred percent (100%) principal forgiveness;
 - (B) The senior obligation(s) predates the DWSRF obligation, the Applicant meets the coverage requirements of this Policy, and the Deputy Director of the Division determines that such additional obligation(s) will not negatively affect existing or proposed DWSRF bonds; or
 - (C) The senior obligation meets the conditions set forth in Section X.A.3.c.iii of this Policy.
- iii. The Applicant may refund debt with new debt if all of the following conditions are met:
 - (A) The new debt refunds or refinances Existing Debt with the same or lower lien position as that Existing Debt;
 - (B) The new debt has the same or earlier repayment term as the refunded debt;
 - (C) The new debt service is the same or lower than the Existing Debt service; and
 - (D) The new debt will not diminish the Applicant's ability to repay its DWSRF obligation(s).
- iv. Additional obligations that meet the coverage requirements of this Policy and secured by the PRF may be on parity with the DWSRF obligations.
- v. Assessment-backed financing should be a closed lien pledge. No additional debt subsequent to the DWSRF financing will be permitted to be secured against the assessment except for refunding consistent with this Section of this Policy.
- vi. Special tax-based financing will require the Division's consent for additional debt.

- d. Proposed Loan Security/Pledge of Revenue and Funds (PRF)
 - i. This is not required if the Applicant is eligible for one hundred percent grant or principal forgiveness funding.
 - ii. The Applicant must identify all sources of security to be pledged.
 - iii. If using real property, the Applicant must provide at least two appraisals of the value, how the value was determined, and whether the property is currently pledged as security on any other debt.
 - iv. A PRF may be a special tax, user fees, or a special assessment, provided that the Applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens.
 - v. A privately owned Applicant must document its authority to bind itself to the Financing Agreement and grant security in relevant revenues. It must also submit draft documents in support of filing a UCC lien with the Secretary of State.
- e. Existing Debt
 - i. The Applicant must submit a schedule of all material debt, both short-term and long-term. This includes debt that reflects an obligation relying on the same revenue as the Planning/Design Financing, and debt that is otherwise material to the transaction.
 - ii. The Applicant must submit a copy of each material debt document (e.g., indenture, installment agreement, loan, note, etc.) and credit instrument (e.g., swaps, hedges, etc.). Where the relevant debt is a bond series, the Applicant must submit both the official statement and the underlying debt document (e.g., indenture, pledge resolution, etc.).
 - iii. If the Applicant has no material debt, the Applicant's Authorized Representative must certify this.
- f. Debt Management Policy

Where the Applicant is a local government, it must submit a copy of its debt management policy.

g. Financial Statements and Budgets

- i. The Applicant must provide three (3) years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or three previous years if the current year has not yet been completed. If the PWS is privately owned, the Applicant must provide tax returns involving the PWS for the most recent three (3) years. The Applicant must identify any restricted funds and the reason for the restrictions.
- ii. The Applicant must provide any adopted budget for future year(s) and a projected budget through first principal and interest payment. Budget projections may include, designated tax, assessments, and/or fee or service charges (as applicable).
- iii. The Applicant must provide its current average residential water rate and calculations employed to represent such a rate. If the average residential water rate is expected to increase following submittal of an application as a result of previously adopted water rate increases, then the Applicant shall provide the anticipated average residential water rates and an adopted schedule for their implementation.

h. Resolutions and Ordinances

- i. The Applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a signatory to all relevant financing documents and supporting materials.
- ii. The Applicant must also submit resolutions or ordinances documenting rate setting in compliance with applicable laws, including Proposition 218 or California Public Utility Commission (CPUC) approval, as applicable.
- iii. The Applicant must submit a resolution authorizing the Loan transaction at closing.

i. Governing Authorities

Applicants must have the authority to do all the following:

- i. Operate a PWS;
- ii. Assess fees for domestic water supply on property owners and consumers in the targeted area or community;
- iii. Legally bind, or cause to be legally bound by the subject system, affected individual property owners in the targeted area or community to accept and pay for domestic water supply from the subject system;

- iv. Hold, or cause to be held by the subject system, all necessary water rights or legally contract for the water supply needed to supply the targeted area or community;
 - v. Acquire and/or construct necessary facilities;
 - vi. Acquire necessary rights to an adequate water supply source;
 - vii. Enter into a Financing Agreement with the State Water Board on behalf of the targeted area or community;
 - viii. Assess and/or charge homeowners, as necessary, to fund any part of a project not provided as DWSRF financing and to operate and maintain the project for the long-term;
 - ix. Enter into contracts, as necessary, with adjacent or neighboring PWSs for water supply sources;
 - x. Enter into contracts, as necessary, with adjacent or neighboring PWSs for the purposes of consolidation. This includes the authority to transfer existing facilities (e.g. wells and distribution pipelines) to achieve a consolidation or regional solution; and
 - xi. If the project involves an extension of water service from an existing PWS, undertake the formation necessary to cover the targeted area or community, including LAFCO approval of a boundary extension, annexation, or formation of a new CWS or a regional authority.
- j. **Material Events, Existing Debt, and Debt Limits**
- i. The Applicant must submit information regarding current, prior, or pending material events (e.g. bankruptcy, defaults, litigation, Grand Jury findings or indictments).
 - ii. The Applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the DWSRF Financing Agreement.
 - iii. The Applicant must identify any debt limit to which it is subject.
- k. **New Tax, Fee, Charge or Assessments Projections**
- The Applicant must provide budget projections based on the proposed taxes, fees, charges, or assessments if a new tax, fee, charge, or assessment will be a PRF.

I. Relevant Agreements

The Applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.

m. California Public Utilities Commission and Surcharges

The Applicant must submit the following documentation if regulated by the CPUC: 1) CPUC authorization for the PWS to enter into a DWSRF Financing Agreement and incur debt for a DWSRF financed project, and 2) CPUC authorization for a surcharge to be pledged as repayment for a DWSRF Loan.

B. Eligible Planning/Design Costs

1. Eligible costs include the preparation of planning/design documents, including but not limited to:

- a. Feasibility studies and project reports
- b. Plans and specifications
- c. Financial analyses
- d. Engineering and design documents
- e. Environmental review and documents
- f. Legal costs and fees
- g. TMF assessments and documents
- h. Capital improvement plans
- i. Asset management plans
- j. Water rate studies
- k. Planning financing application
- l. Test wells
- m. Temporary easements for planning purposes

2. Ineligible Project Costs

- a. Land acquisition that is not an integral part of the project

- b. Water rights
 - c. Motor vehicles used for employee transportation or for the transportation of materials
 - d. Laboratory fees for routine compliance monitoring
3. Eligible planning and design costs that were incurred by the Applicant prior to the Eligible Start Date of a planning/design Financing Agreement may be reimbursed, provided all applicable state and federal requirements have been met. If a Recipient incurs eligible planning/design costs before the execution of a Financing Agreement, it does so at its own risk.
 4. The Applicant may include a Contingency amount in its application to reimburse unforeseen eligible costs. The inclusion of a Contingency amount is subject to credit review and approval by the Division. If the credit review shows the Applicant can afford repayment, the Financing Agreement may include the Contingency amount.

C. Planning/Design Financing Terms

1. Interest

The interest rate shall be determined as specified in Section VI.E.1 of this Policy, and interest will accrue from the date of each disbursement and continue to accrue until the Financing Agreement is fully amortized. The Recipient will be invoiced accrued interest during the project, in accordance with Section XVII.A of this Policy.

2. Amortization Period

Repayments will be amortized by equal annual payments over five (5) or ten (10) years, whichever the Applicant selects, unless restructured. The first amortized principal and interest repayment shall be due no later than one (1) year following the completion of the planning/design project. As a courtesy, the Division will issue a revised payment schedule after the Recipient submits an acceptable final disbursement request. The grace period on the payment is specified in Section XVII.C.2 of this Policy.

3. Restructured Planning/Design Financing

- a. The balance of a planning/design Financing Agreement may be restructured as part of executing a DWSRF construction Financing Agreement. If the Applicant intends to restructure the planning/design Financing Agreement as part of a DWSRF construction Financing Agreement, then the scope of work must ensure development of all documents necessary for construction financing approval.

- b. The balance of the planning/design Financing Agreement will carry the financing terms applicable to the construction Financing Agreement.
- c. Interest will accrue on the Planning/Design Financing balance upon execution of the construction Financing Agreement per the terms of the construction Financing Agreement.
- d. Approval of Planning/Design Financing does not obligate the State Water Board to provide subsequent Construction Financing.

XI. CONSTRUCTION FINANCING

An Applicant must submit all documents noted below, unless otherwise authorized by the Deputy Director of the Division for good cause, to obtain Construction Financing. The Division may require that the Applicant submit additional information or certifications necessary to ensure the project complies with state and federal requirements. *Appendix H* contains the four (4) packages of an application for Construction Financing. The Division will accept partial packages and applications but will process complete applications ahead of incomplete applications. Priority will be given to projects on the Fundable List.

A. Construction Application Requirements

1. General Information Package

This package includes basic Applicant and project information.

2. Technical Package

a. Project Report

The Applicant must submit an engineering report, or its equivalent, that contains the information outlined in *Appendix G* as appropriate to the project. Engineering reports must be signed and stamped by a registered Professional Engineer. The contents of the report outlined in *Appendix G* are not prescriptive but are intended to provide the Division with sufficient information to evaluate whether the project is eligible for DWSRF financing, meets applicable technical requirements, and is likely to meet applicable objectives and standards.

- i. The Applicant must evaluate all feasible alternatives. For Applicants seeking Construction Financing, an analysis of alternatives must be submitted as part of the application.
- ii. The Applicant must evaluate consolidation of the subject system with nearby water systems. If consolidation is deemed infeasible, the Applicant must discuss the reasons for that determination.

- iii. The selected construction project must be the most long-term, cost-effective solution. The engineering analysis required as part of the application must compare estimated capital and operations and maintenance (O&M) costs over the projected term of the Financing Agreement or over a twenty (20) year period, whichever is longer. The evaluation must analyze the technical effectiveness of each alternative.
- b. Technical, Managerial, and Financial Capacity
 - i. The Applicant must provide a completed TMF assessment using the appropriate form in *Appendix C*.
 - ii. The Division will review the TMF assessment for the subject system to ensure all mandatory elements of TMF have been met or will be achieved upon Completion of Construction.
 - c. Water Rights
 - i. Section 5103 of the Water Code requires water diverters to submit records of water diversions to the State Water Board's Division of Water Rights. If the Applicant is not current on these submittals, the Division will not execute a Financing Agreement or disburse any funds until the reports are submitted unless the Deputy Director determines that (a) the DWSRF financing will assist the Applicant in complying with the reporting requirements, and (b) the Applicant has submitted to the State Water Board a one-year schedule for complying with the reporting requirement.
 - ii. The Applicant must provide information to allow the Division to determine whether a petition for change of water rights must be filed and approved with the State Water Board's Division of Water Rights for the project.
 - d. Water Conservation and Urban Water Management
 - i. All Applicants that are Urban Water Suppliers must comply with the provisions of Division 6, Part 2.6 of the Water Code (commencing at section 10610).
 - ii. Water Metering

All Applicants must certify compliance with water metering requirements of Section 529.5 of the Water Code or that the water metering requirements are not applicable to the Applicant.
3. Environmental Package
- a. This package includes information and documentation necessary to evaluate applicable state and federal environmental requirements.

- b. Applicants must provide complete and adequate project specific Environmental Documents to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet federal environmental review requirements. In accordance with the Operating Agreement, the State Water Board uses the State Environmental Review Process (SERP) to fulfill these requirements. (see *Appendix O*)

4. Financial Security Package

This package includes information and certifications necessary to evaluate the financial security of the Applicant and the proposed Financing Agreement.

a. General Requirements

- i. The Division will review financial documents to determine the Applicant's credit capacity as well as the capacity to sustainably operate and maintain its water system, including the proposed construction project.
- ii. The Division will apply the Credit/Financial Guidelines (see *Appendix E*) in the review of each Financial Security Package or request for securing additional debt.
- iii. If the Applicant's finances cannot support the funding request, Division staff will work with the Applicant to find a way to finance the project(s), if feasible.

b. Coverage and Reserve

- i. The Recipient will normally be expected to establish and maintain, until the Financing Agreement is repaid in full, a restricted reserve equal to one year's debt service from available cash prior to the construction completion date, unless the Division determines that credit or tax considerations support a different result.
- ii. The Recipient must comply with existing coverage covenants or with DWSRF coverage requirements, whichever covenants or requirements provide greater coverage. The Division will employ appropriate credit criteria to evaluating all pledged sources of repayment.
 - (A) The Recipient's pledged sources of repayment for the Loan, in any fiscal year following the fiscal year in which the project is completed and until the Loan is repaid, must be at least the sum of (a) 1.2 times the total senior (D^{senior}) and parity (D^{parity}) annual debt service payable from the pledged sources and (b) 1.0 times the subordinate ($D^{\text{subordinate}}$) annual debt service payable from the pledged sources, as reflected in the following formula, unless the Division determines that credit considerations allow a different debt service coverage requirement:

$$\text{PRF} \geq [1.2(D^{\text{senior}} + D^{\text{parity}}) + 1.0(D^{\text{subordinate}})]$$

- (B) The Applicant may pledge revenues, assessments and/or special taxes to repayment of a Loan.
- (C) The Division may accept covenant requirements as stated in an Applicant's existing master trust indenture or similar debt document if such covenant requirements meet the Division's credit review risk assessment. (see *Appendix E*, Section B)

c. Additional Debt

- i. The State Water Board normally expects the DWSRF debt obligation's lien status to be on parity with the Applicant's senior/first tier lien debt obligations, unless the Division determines that credit considerations support a lower lien status.
- ii. Additional obligations secured by the PRF may be senior to DWSRF obligations in the following circumstances:
 - (A) The DWSRF Financing Agreement provides for one hundred percent (100%) principal forgiveness;
 - (B) The senior obligation(s) predates the DWSRF obligation, the Applicant meets the coverage requirements of this Policy, and the Deputy Director of the Division determines that additional obligation(s) will not negatively affect existing or proposed DWSRF bonds; or
 - (C) The senior obligation meets the conditions set forth in Section XI.A.4.c.iv of this Policy.
- iii. Additional obligations that meet the coverage requirements of this Policy and that are secured by the PRF may be on parity with the DWSRF obligations.
- iv. The Applicant may refund debt with new debt if all of the following conditions are met:
 - (A) The new debt refunds or refinances Existing Debt with the same or lower lien position as the Existing Debt;
 - (B) The new debt has the same or earlier repayment term as the refunded senior debt;
 - (C) The new debt service is the same or lower than the Existing Debt service; and

- (D) The new debt will not diminish the Applicant's ability to repay its DWSRF obligation(s).
- v. Assessment-backed financing will be a closed lien pledge. No additional debt subsequent to the DWSRF financing will be permitted to be secured against the assessment except for refunding consistent with this Section of this Policy.
- vi. Special tax-based financing will require the Division's consent for additional debt.
- d. Proposed Loan Security/Pledged Revenue and Funds (PRF)
 - i. This is not required if the Applicant is eligible for one hundred percent (100%) grant or principal forgiveness funding.
 - ii. The Applicant must identify all sources of security to be pledged.
 - iii. If using real property, the Applicant must provide at least two appraisals of the value, indicate how the value was determined, and indicate whether the property is currently pledged as security on any other debt.
 - iv. A PRF may be a special tax, user fees, or a special assessment, provided that the Applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens. Typically, assessment-backed financing will be combined with a revenue pledge.
 - v. A privately owned Applicant must document its authority to bind itself to the Financing Agreement and grant security in relevant revenues. It must also submit draft documents in support of filing a UCC lien with the Secretary of State.
- e. Existing Debt
 - i. The Applicant must submit a schedule of all material debt, both short-term and long-term. This includes debt that reflects an obligation relying on the same revenue as the Construction Financing, and debt that is otherwise material to the transaction.
 - ii. The Applicant must submit a copy of each material debt document (e.g., indenture, installment agreement, loan, note, etc.) and credit instrument (e.g., swaps, hedges, etc.). Where the relevant debt is a bond series, the Applicant must submit both the official statement and the underlying debt document (e.g., indenture, pledge resolution, etc.).
 - iii. If the Applicant has no material debt, the Applicant's Authorized Representative must certify this.

f. Debt Management Policy

Where the Applicant is a local government, it must submit a copy of its debt management policy.

g. Future Capital Needs

- i. The Applicant must describe its capital improvement and asset management plans, and the long-term indebtedness needed to fund its future capital improvements. The Applicant must provide any formal capital improvement and asset management plans to the Division.
- ii. Unless otherwise specified in the PWS's capital improvement plan that is acceptable to the Division, a budgeted cost for the future replacement of the construction project will be factored into the credit analysis.

h. Financial Statements and Budget

- i. The Applicant must provide three (3) years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or (3) three previous years if the current year has not yet been completed. If the PWS is privately owned, the Applicant must provide tax returns involving the PWS for the most recent three (3) years. The Applicant must identify any restricted funds and the reason for the restrictions.
- ii. The Applicant must provide any adopted budget for future year(s) and a projected budget through first principal and interest payment. Budget projections may include designated tax, assessments, and/or fee or service charges (as applicable).
- iii. The Applicant must provide its current average residential water rate and calculations employed to represent such a rate. If the average residential water rate is expected to increase following submittal of an application as a result of previously adopted water rate increases, then the Applicant shall provide the anticipated average residential water rates and an adopted schedule for their implementation.

i. Tax Questionnaire and Reimbursement Resolution

All Public Agency Applicants must provide certain information for the State Water Board's tax counsel to assess the Applicant's ability to receive DWSRF funds from tax-exempt revenue bond proceeds and submit a Reimbursement Resolution. While the Reimbursement Resolution establishes a potential date for reimbursement, the actual date and limitations for eligible costs will be stated in the Financing Agreement.

j. Resolutions and Ordinances

The Applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a signatory to all relevant financing documents and supporting materials. The Applicant must also submit resolutions or ordinances documenting rate setting in compliance with applicable laws, including Proposition 218 or CPUC approval, as applicable.

k. Governing Authorities

Applicants must have the authority to do all the following:

- i. Operate a PWS;
- ii. Assess fees for domestic water supply on property owners and consumers in the targeted area or community;
- iii. Legally bind, or cause to be legally bound by the subject system, affected individual property owners in the targeted area or community to accept and pay for domestic water supply from the subject system;
- iv. Hold, or cause to be held by the subject system, all necessary water rights or legally contract for the water supply needed to supply the targeted area or community;
- v. Acquire and/or construct necessary facilities;
- vi. Acquire necessary rights to an adequate water supply source;
- vii. Enter into a Financing Agreement with the State Water Board on behalf of the targeted area or community;
- viii. Assess and/or charge homeowners, as necessary, to fund any part of a project not receiving Non-Repayable DWSRF financing and to operate and maintain the project for the long-term;
- ix. Enter into contracts, as necessary, with adjacent or neighboring PWSs for the purposes of consolidation. This includes the authority to transfer existing facilities (e.g., wells and distribution pipelines) to achieve a consolidation or regional solution; and
- x. If the project involves an extension of water service from an existing PWS, undertake the formation necessary to cover the targeted area or community, including LAFCO approval of a boundary extension, annexation, or formation of a new CWS or a regional authority.

- I. Material events, Existing Debt, and debt limits
 - i. The Applicant must submit information regarding current, prior, or pending material events (e.g., bankruptcy, defaults, litigation, Grand Jury findings or indictments).
 - ii. The Applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the DWSRF Financing Agreement.
 - iii. The Applicant must identify any debt limit to which it is subject.

m. Relevant Agreements

The Applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.

n. California Public Utilities Commission and Surcharges

If the PWS is regulated by the CPUC, then the Applicant must submit the following documentation: 1) CPUC authorization for the PWS to enter into a DWSRF Financing Agreement and incur debt for a DWSRF financed project, and 2) CPUC authorization for a surcharge to be pledged as repayment for a DWSRF Loan, or to support the operations and maintenance requirements associated with the project.

B. Eligible Construction Costs

Project costs are eligible to the extent consistent with federal and state authority. The following are general categories of eligible and ineligible costs. The Applicant must segregate the eligible and ineligible costs. When cost categories include a combination of eligible and ineligible costs, the ineligible costs will be estimated on an incremental basis.

1. Eligible Project Costs

- a. Treatment facilities, including monitoring equipment, process control systems, back-up reliability equipment, start-up costs, purchase of property, rights-of-way, and easements for land that will be an integral part² of the treatment process;

² Integral part means only the land that is necessary to accommodate the treatment facilities, including reasonable administration, employee parking, and laboratory building space directly related to their operation. Land meant to provide a buffer zone around treatment facilities, public parking, or reserved for future expansion is not eligible.

- b. Water sources, if necessary to comply with state or federal drinking water standards, including drilling costs, equipment, structures to protect the quality of source water, and purchase of source capacity in another water system. Treatment facilities on a new source are eligible if required for the source to be utilized;
- c. Consolidation project costs, including but not limited to connection fees, source capacity charges, costs to secure or develop new water sources to meet the additional demand, and legal fees for preparation of documents are eligible;
- d. Value appraisal and the cost of purchasing a water system may be eligible as specified in the IUP;
- e. Pipelines and water mains that are integral to the project and are necessary for the project to function properly. Purchase of property, rights-of-way, and easements must be confined to the pipelines for which it was acquired;
- f. Installation and replacement of Private Laterals to an existing residential or school structure by an Eligible System, including purchase of easements to maintain control of such infrastructure³;
- g. Implementing measures needed to comply with TMF requirements, including conducting water capacity/demand analyses, technical evaluations, and the development of operations plans;
- h. Equipment and additional capacity to provide fire protection as required by the applicable governing fire code and incidental appurtenances for fire protection such as fire hydrants;
- i. Purchase and installation of water supply meters⁴;
- j. Backflow prevention devices if: (1) installation is required for operation of the project, and (2) the responsibility for installation of such devices rests with the PWS;
- k. Contingency for change orders approved by the Division for increased costs provided the costs are eligible, consistent with the approved scope of the project and the credit review;

³ Cost for the installation of a Private Lateral can only be reimbursed to an Eligible System, who must complete installation of the Private Lateral and ensure its operation and maintenance for its Useful Life.

⁴ If a construction project involves the installation of water meters, the Recipient shall implement volumetric pricing and begin charging volumetric rates no later than one year following the project completion date.

- l. Stationary and mobile equipment integral to the project. Equipment must be dedicated to the storage, treatment, or distribution facilities for which it was purchased;
 - m. Preparation of the construction application and planning/design documents, construction management, engineering, and administration;
 - n. Preparation of environmental review documents, and mitigation measures, such as landscaping, when mandated by state and/or federal agencies;
 - o. Necessary insurance related to the construction contract.
2. Ineligible Costs
- a. Land acquisition that is not an integral part of the project;
 - b. Facilities that are constructed primarily to serve future growth;
 - c. Construction of dams or rehabilitation of dams;
 - d. Construction of facilities primarily used for irrigation systems;
 - e. Water rights, except when acquired through physical or managerial consolidation with another water system;
 - f. Reservoirs or rehabilitation of reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are on the property where the treatment facility is located;
 - g. Decorative items (art work, sculptures, reflective ponds, fountains, etc.);
 - h. Extended warranties for equipment and act of God, flood, and earthquake insurance costs;
 - i. Motor vehicles used for employee transportation or for the transportation of materials;
 - j. Laboratory fees for routine compliance monitoring;
 - k. Operation and maintenance expenses except to the extent they are used in the startup and testing of the completed project unless otherwise authorized by the law;
 - l. Laboratories, except those necessary for operation of a treatment facility.

3. The Division may reimburse eligible Allowances (Soft Costs) as well as identified, eligible pre-purchased material and equipment costs that were incurred prior to the Eligible Start Date of an associated construction Financing Agreement, provided all applicable state and federal requirements have been met. Construction costs incurred before the Division's execution of a construction Financing Agreement are at the Applicant's risk. Starting construction before the State Water Board has completed environmental review may render a construction project ineligible for financing. Additionally, changes to laws or requirements that occur prior to execution of a Financing Agreement may affect some or all funding eligibility.
4. Costs previously disbursed under a planning/design Financing Agreement are not eligible for reimbursement in a construction Financing Agreement.
5. The Division will determine eligible capacity of the project and related facilities using the metrics and limitations established in *Appendix H*, prior to financing approval. The capacity of the project and related facilities must be consistent with any applicable environmental constraints.
6. The Contingency amount may be used to pay for eligible change orders approved by the Division. Contingencies are subject to credit review and approval by the Division.

C. Construction Financing Terms

1. Interest

The interest rate shall be determined as specified in Section VI.E.1 of this Policy, and interest will accrue from the date of each disbursement and continue to accrue until the Financing Agreement is fully amortized. The Recipient will be invoiced accrued interest only during construction of the project, in accordance with Section XVI.A of this Policy.

2. Amortization Period

- a. Repayments will generally be amortized by equal annual payments over 30 years, or the Useful Life of the financed project, whichever is shorter for PWSs not serving a DAC or SDAC.
- b. Repayments will generally be amortized by equal annual payments up to 40 years, or the Useful Life of the financed project, whichever is shorter for Eligible Systems serving a DAC or SDAC.
- c. The first amortized principal and interest repayment will be due no later than one (1) year following Completion of Construction in accordance with Section XVI.C for PWSs not serving a DAC or SDAC.

- d. The first amortized principal and interest repayment will be due no later than 18 months following Completion of Construction in accordance with Section XVI.C for Eligible Systems serving a DAC or SDAC.

XII. FINANCING AGREEMENTS

A. Financing Approval

1. The Recipient may receive a Financing Agreement based on the estimated Eligible Project Costs after an application for its project has been reviewed and approved.
 - a. For routine, noncontroversial, fundable projects the Executive Director, Deputy Director of the Division, or designee, may approve and execute planning/design and construction Financing Agreements and amendments. Non-routine or controversial, fundable projects will be considered by the State Water Board.
 - b. Upon review and approval of required documents, the Division will prepare a Financing Agreement. The Division will not disburse funds until the Financing Agreement is executed and all conditions for disbursement set forth in the Financing Agreement have been met.
2. The Division may issue a notice to an Applicant that: (1) identifies costs eligible for DWSRF financing, (2) identifies terms that will be applicable to a Financing Agreement provided that specific conditions are met, and (3) establishes the conditions that must be met before a Financing Agreement will be executed.
3. Legal Opinion(s): At closing, the Applicant will be expected to submit an opinion, satisfactory to the Division's counsel, from its general counsel and, if relevant, its bond counsel, substantially similar to the templates in *Appendix Q*.
4. Applicants may start construction prior to execution of the Financing Agreement but are not guaranteed financing approval and an executed Financing Agreement. (see Section XI.B.3)
5. The Applicant must submit a resolution authorizing the Loan transaction at closing.

B. Execution of the Financing Agreement

The Executive Director, Deputy Director of the Division, or designee may execute agreements and amendments on behalf of the State Water Board for projects with approved applications. The State Water Board will not disburse funds until after a Financing Agreement has been executed.

1. Conditions and Expiration Date(s)

Financing Agreements may include appropriate conditions and expiration dates to ensure that projects are completed successfully and expeditiously in conformance with applicable requirements. If a Recipient misses an expiration date or fails to fulfill a condition of the agreement and does not receive an extension or amendment of the condition, it may need to reapply for DWSRF funding.

2. Allowances (Soft Costs)

The Soft Cost amounts in the Financing Agreement will be based on the amount requested by the Applicant and approved by the Division.

3. Compliance with Federal and State Statutes and Authorities

The Recipient must agree to comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations, permits, ordinances, and labor compliance requirements. The Financing Agreement includes the Applicant's certification that the Applicant has complied, or will comply, with a non-exclusive list of federal and state laws, as well as any other applicable federal and state laws. Additional details regarding the following federally-mandated requirements are contained in the Appendices:

- a. Disadvantaged Business Enterprise (DBE) (see *Appendix I*)
- b. Davis-Bacon Wage Requirements (see *Appendix O*)
- c. American Iron and Steel (AIS) (see *Appendix O*)

4. Procurement Procedures

- a. When contracting for professional services (e.g. professional engineering, environmental, land surveying, project management), Recipients must implement procedures that ensure such services are engaged on the basis of demonstrated competence, qualifications, and at reasonable prices. See *Appendix J* for guidance on the engineering firm selection process.
- b. Recipients that are public agencies must comply with applicable state or local bidding requirements when contracting for construction work. Privately owned water systems are required to comply with the procedures and requirements set forth in *Appendix K*. The Recipient must certify that it has complied with all applicable contracting requirements.

- c. Neither the U.S. EPA nor the State Water Board will participate in resolving bid or contractual disputes. The Recipient will have sole responsibility to resolve all bid or contractual disputes. The State Water Board will not reimburse legal or other costs associated with such disputes.

C. Financing Agreement Amendments

1. The Division will use the bids, proposals, and purchase orders accepted by the Recipient, along with the requested Contingency amount to determine if a Financing Agreement amendment is necessary. Cost increases will be evaluated on a case by case basis and are subject to the Recipient's credit capacity.
2. If an amendment is approved, the Division will incorporate its eligibility decisions into an amended Financing Agreement and send the amendment to the Recipient for signature. The amended Financing Agreement must be executed prior to disbursement of costs associated with project changes identified in the amendment.
3. The project completion date may be revised by amending the Financing Agreement, if necessary. The Recipient must obtain the Division's consent for a revision with sufficient advance notice as required by the Division.
4. Change orders will be reviewed on a case by case basis by the Division. The Recipient must cover change order costs until such costs are approved by the Division. The Division will disencumber any unused funds, including Contingency, at the end of the project.
5. Where the Financing Agreement provides for one hundred percent (100%) principal forgiveness, the total amount of DWSRF principal forgiveness cannot exceed the limits established in the IUP or the amount made available by U.S. EPA. The Division will not approve an amendment which results in these limits being exceeded.
6. All project changes that result in costs that exceed the approved budget, that the Division determines it cannot finance, will be the responsibility of the Recipient.

XIII. DISBURSEMENTS

All disbursements are subject to federal and state requirements and/or limitations notwithstanding any provisions of this Policy. Disbursement of funds is contingent on execution of a Financing Agreement, and the State Water Board will not disburse funds until after an agreement has been executed. A Recipient must submit disbursement requests in a timely manner and at the discretion of the Division to ensure the timely and expeditious use of DWSRF funds. Costs submitted to the Division must have been incurred, but the Recipient does not need to have actually paid the costs before requesting reimbursement. The Division will not disburse any funds until the Recipient adopts any required rate increase, assessment, surcharge, or other charge and demonstrates the rates, assessment, surcharge, or other charge, were adopted in accordance with the legal requirements the Recipient is subject to for the setting of rates, assessments or other charges to customers. (Publicly owned water systems are generally subject to Proposition 218 requirements. See California Constitution, article XIIC and XIID.)

A. Disbursement Requests

1. The Division will send the Recipient a copy of the required forms to request reimbursement with the Financing Agreement. *Appendix L* contains claim forms and instructions for requesting disbursements.
2. The Recipient must ensure that adequate local funding is available to pay its consultants and contractors in case the disbursement is not processed before payment to the consultant or contractor is due.
3. The Division will base disbursement on the amount of money currently due and payable to a consultant, contractor, or vendor for eligible costs incurred, minus any amounts previously disbursed by the Division.
4. In limited circumstances, principal, interest and fees on Bridge Financing may be eligible for reimbursement. Applicants should contact the Division with the terms of such Bridge Financing prior to securing funds or establishing a credit line.
5. The Recipient must certify that work has been completed and that claimed costs were incurred. The Recipient must submit invoices or other documentation acceptable to the Division to substantiate the reimbursement of eligible costs. Ineligible or unsubstantiated costs will not be reimbursed.
6. The Contingency amounts may be used to pay for eligible change orders approved by the Division.

B. Final Disbursement

1. The Financing Agreement will establish a deadline for submittal of the final disbursement request. The complete final disbursement request must be received by the Division in a timely manner. The final disbursement request will not be processed until the Project Completion Report is submitted per Section XV of this Policy.
2. Prompt submittal of the final disbursement request is the responsibility of the Recipient. If the Division has not received the complete final disbursement request and the Division has not issued prior approval to submit the final disbursement request at a later time, the undisbursed balance of the Financing Agreement is subject to deobligation.

XIV. CONSTRUCTION

A. Project Conference or Media Events

The Recipient must notify the Division of any significant press or public media events (e.g., ground-breaking or ribbon-cutting) related to the project with at least ten (10) days' notice.

B. Interim and Final Inspections

1. The Division should conduct interim inspections during construction.
2. The Division will conduct a final project inspection.

C. Progress Reports

At least quarterly, the Recipient must submit progress reports on the status of project activities starting with the issuance of the executed Financing Agreement and ending upon final disbursement. The reports must contain at least the following information:

1. A summary of progress to date including a description of progress since the last report, percent complete, percent invoiced, and percent schedule elapsed;
2. A listing of change orders including amount, description of work, and change in contract amount and schedule;
3. Any problems encountered, proposed resolutions, schedule for resolutions and status of previous problem resolutions; and
4. A summary of compliance with environmental conditions, if applicable.

XV. PROJECT COMPLETION REPORT

The Recipient must notify the Division that its construction project was completed by submitting a Project Completion Report signed by a registered engineer to the Division and the District Office of the Division of Drinking Water. The Project Completion Report must be submitted on or before the due date established in the Financing Agreement. The Project Completion Report must describe the project, describe the water quality or quantity problem the project sought to address, discuss the project's likelihood of successfully addressing that water quality or quantity problem in the future, and summarize compliance with environmental conditions, if applicable. Additional Project Completion elements may be required by the Division on a case-by-case basis.

XVI. FINANCING PAYMENTS

- A. Interest and other charges, if applicable, will accrue on all disbursements on the date of each disbursement. During a planning/design or construction project, the Recipient shall pay interest to the State Water Board on all financing disbursements. Interest accrued on financing disbursements will not be deferred. The Division will invoice the Recipient annually on interest accrued during the project.
- B. The Division will issue a final payment schedule after the Recipient submits an approvable final disbursement request. The final payment schedule will include the following:
 - 1. The interest rate, administrative service charges, and other charges as appropriate, if applicable;
 - 2. The final principal amount including interest, charges, and fees, if applicable; and
 - 3. A complete amortization table.
- C. The Recipient must make its first annual amortized principal and interest payment as established in the Financing Agreement and any amendments thereto.
 - 1. As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the payment due date, but prompt payment remains the responsibility of the Recipient.
 - 2. The Recipient will have a ten (10) day grace period, after which time the State Water Board may assess a penalty in the amount of costs incurred for lost interest earnings, staff time, bond default penalties, and other costs incurred or flowing from the late payment. Any penalties will be deposited in the DWSRF account. Penalties will not change the principal balance of the Financing Agreement and will be treated as a separate receivable in addition to the annual payment due.

D. Prepayments

Loan prepayments require the consent of the Deputy Director of the Division. See Section XII of the Clean Water and Drinking Water State Revolving Funds Debt Management Policy.

E. Loan Compliance and Monitoring

1. All Loan Recipients must submit audited financials to the Division annually for at least the first 5 years of the repayment term and possibly for every year until full Loan repayment. Where the Loan has been pledged as security for the Board's revenue bond debt, the Division will review audited financials every year until full Loan repayment.
2. Rate Stabilization Fund transfers may be viewed as supplemental revenue to System Revenues, for purposes of complying with the Debt Service Coverage requirement on an occasional basis during the repayment term and may require notice.
3. Where SRF revenue bond proceeds funded any portion of a Loan, the Division will review tax compliance documentation on that Loan annually.

XVII. RECORD KEEPING REQUIREMENTS

- A. Recipients must maintain separate project accounts in accordance with federal requirements as specified in the Financing Agreement. (See 2 CFR, Part 200, Subpart F). In most cases, the records retention period will be thirty-six (36) years.
- B. Recipients shall maintain project accounts according to generally accepted accounting principles (GAAP), the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

XVIII. BOARD RESERVATION OF AUTHORITY

- A. Prior to approving any Financing Agreement, the State Water Board reserves the right to modify this DWSRF Policy as necessary to provide for effective and equitable use of DWSRF funds, including:
 1. Reducing the eligible funding amount for any project for cause;

2. Conforming to applicable state and federal laws, rules, regulations, or agreements, including but not limited to the Operating Agreement, the Capitalization Grant Agreement, and agreements related to any DWSRF revenue bonds.

B. The Deputy Director of the Division may update and amend the DWSRF Policy Appendices and create new Appendices, unless doing so would require additional approval by U.S. EPA or the Executive Director, as necessary for administrative or procedural changes not in conflict with this Policy.

XIX. DISPUTES

A. Approvals or actions taken by the Division's predecessors pursuant to statutes, regulations, and policies in affect at the time of the approvals or actions remain valid. Division approvals or actions after the effective date of this Policy that conflict with or are inconsistent with approvals or actions taken by the Division's predecessors will be resolved by the Deputy Director of the Division.

B. Division approvals or actions taken under previous versions of this Policy remain valid. Division approvals or actions after the effective date of this Policy amendment that conflict with or are inconsistent with approvals or actions taken under previous versions of this Policy will be resolved by the Deputy Director of the Division.

C. An Applicant or Recipient may appeal a staff decision within thirty (30) days to the Deputy Director of the Division or designee, for a final Division decision. An Applicant or Recipient may appeal a final Division decision to the State Water Board within thirty (30) days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.

D. Where a Financing Agreement has been executed, the dispute and remedies provisions of that agreement will control, and the dispute provisions of this section are inapplicable.