



(11/27/18) Board Meeting
CWSRF Policy Amendment
Deadline: 10/19/18 by 12 noon

October 19, 2018

Felicia Marcus, Chair, and Members
State Water Resources Control Board
1001 I Street, 25th Floor
Sacramento, CA 95814



Via electronic mail: commentletters@waterboards.ca.gov

SUBJECT: **Comment Letter – November 27, 2018 Board Meeting – CWSRF
Policy Amendment - Corrected Copy**

Dear Chair Marcus and Members of the Board:

The California Association of Sanitation Agencies (CASA) appreciates the opportunity to provide comments on the draft Proposed Amendment to the Policy for Implementing the Clean Water State Revolving Fund (CWSRF). For more than 60 years, CASA has been the leading voice for public wastewater agencies on regulatory, legislative and legal issues. Our member agencies are engaged in advancing recycled water production and beneficial reuse, generating renewable energy supplies, and producing and beneficially using biosolids and other valuable resources. Through these efforts we help create a clean and sustainable environment for Californians. The CWSRF is a critical source of financing for many of these projects.

The Fundable List and Priority Scoring

In the 2019 Intended Use Plan (IUP), the State Water Resources Control Board (SWRCB) identified \$1 billion as a sustainable funding target given available funding and current staffing levels. As the need for financing exceeds this amount, the SWRCB needs to implement a system for prioritizing the projects to determine those that will be funded in any given year. We appreciate that CWSRF staff spent significant effort to develop this system, and also the steps taken to incorporate borrower feedback on the proposal. Overall, we believe the proposed priority system meets several objectives we share with the SWRCB. The proposal is objective, clear and relatively simple. The new annual funding target and scoring process improves cooperative planning for the State and for borrowers, and provides greater predictability for borrowers who are awaiting a funding decision. Applicants should be able to score their own projects to predict generally where they will rank. However, we have several more specific concerns with certain aspects of the proposed amendments.

One concern is whether the system will provide sufficient separation of projects to allow for a clear “cut off” score. As discussed in the workshops, a test run of the proposed prioritization

approach on last year's fundable list resulted in a large number of projects with the same score, and we would anticipate a similar result in future years under the new prioritization system. We understand it may take a few years of experience with the approach to identify changes or adjustments that need to be made. However, from our perspective, we would like to minimize the number of projects required to accept partial funding when the costs of the projects above the minimum score exceed the funding target. We offer a few specific comments on each of the scoring sections as follows:

Primary Scores: Table 1

We generally agree with the proposed relative primary scores in that the scores properly reflect the importance of water quality protection, which is the core purpose of the CWSRF. However, we have specific concerns about how some of the criteria are characterized.

- We are concerned that projects to address a "Drinking Water Source" are elevated such that corrective action projects in this area receive the highest primary points. While projects that address drinking water sources are important, many of the underlying issues can be addressed through the drinking water SRF program. Moreover, those projects that address public health, which automatically go on the fundable list, would seem to capture any significant drinking water issues impacting public health.
- We are concerned about how the "Impaired Water Body" resource/impact category is scored, namely that it would make more sense for all projects designed to address TMDLs (impaired water bodies) to be designated as "correcting" in nature.
- We are concerned that the proposed definition of "correcting" requires the applicant to document that the violations are the subject of enforcement actions. For a variety of reasons, this requirement should be reworded or eliminated. In addition, the definition of "correcting" should be reworded to state that the applicant must "demonstrate a direct the connection between completion of the project and correction of the problem." While some projects may be able to demonstrate a very clear direct connection, others (for example, projects to capture stormwater to address bacteria in one of the rivers) may be more indirect but should be allowed to qualify because of the underlying purpose of the project.
- We are concerned that the proposed policy amendment does not provide separate scoring for water recycling projects that would result in corrective or preventative actions. Water recycling projects are at times required as preventative and corrective actions to meet permit and regulatory requirements. For example, water recycling projects could include replacement of treatment infrastructure necessary to prevent or correct permit violations. Tertiary filters may need replacement to meet turbidity requirements, or changes to the disinfection process may be needed to correct potential Title 22 violations. These could be scored more favorably if corrective and preventative scores were available for these projects.
- We have some concern that additional points (and therefore to an extent, priority) are given to projects that are corrective over projects that are preventive. As a matter of policy, this could "reward" an agency for delaying addressing system deficiencies until

an enforcement action is taken, rather than providing funding incentives for an agency that proactively takes preventative action to avoid a violation or exceedance in the first place. We understand that practically speaking, an agency taking corrective action to address a violation must resolve the problem as soon as possible, but not to the detriment of those who are looking to proactively prevent a potential future violation.

Secondary Score: Table 2

- Within the category for a multi-agency regional environmental management plan, the Division of Financial Assistance (DFA) should consider adding whether a project is included (or listed) in an Integrated Regional Water Management Plan. Projects identified in these plans and otherwise eligible for CWSRF funds appear to meet the other elements of this criteria.
- The second item in the secondary table should add the word “reduces” to the second subpart for consistency. “Project addresses multiple water quality impairments, eliminates or reduces multiple sources of water pollution, or eliminates *or reduces* a discharge of waste regulated by a Regional Water Quality Control Board or the SWRCB.

We also support the inclusion of match funding as one of the characteristics for secondary scoring. We recommend that projects that agree to accept shorter term financing (e.g. 20 year versus 30 year) receive secondary scoring points. As we noted in our IUP comments, cash flow is an issue for the program, and a borrower’s willingness to accept shorter financing terms should move it up the prioritization list. Although we are referencing this under the secondary score section, including it as simply another secondary scoring option would limit its effectiveness because the points awarded here are not additive. The willingness to accept shorter terms should be its own category or factor that leads to additional points for the applicant.

In addition, the proposed amendments do not appear to have a mechanism for (or flexibility that would allow) increasing loan amounts for borrowers that have received partial funding agreements. The 2018/19 CWSRF IUP noted that funding amounts for the three projects that were selected for partial funding could be subject to potential increase in a future IUP. This should be specifically called out in the proposed policy. Finally, the proposed amendments and scoring tables do not appear to prioritize projects that have secured complementary sources of financing. Pairing CWSRF funding with other State and Federal financing sources optimizes the cost benefit of subsidized funds, since many of the administrative compliance and reporting requirements are the same for these funding programs. DFA should consider the inclusion of some scoring bonus for those projects that have secured complementary sources of financing.

Table 3: Readiness Score

- Additional clarity is needed regarding how the readiness score interacts with the application submission timing. Specifically, the “Readiness Score” (IV, 2, c) requires

project plans and specifications to be at least 49% complete to get a score of 1, and 89% to get a score of 2. Anything less than 49% receives a score of 0. However, in section IX, A, 1, it states that project financing applications should be submitted “in advance of the 10% design level effort.” Thus, it appears DFA is encouraging applicants to submit applications at a time when they would receive a low readiness score.

Managing Financial Assistance Capacity

As discussed in previous meeting and comments, the SWRCB needs to directly address and manage capacity constraints now and over the long-term. One way to do that is by creating separate priority lists for planning/design and construction assistance, by awarding points to an applicant’s project which previously received planning/design or construction assistance for the same project, and by awarding points to applicants which have obtained or in the process of obtaining co-funding. These concepts are articulated in greater detail in an attachment to these comments.

Eligibility

We support the proposed change to allow funding of local government programs to address private sewer laterals. The Policy amendment specifically eliminates private sewer laterals from the ineligibility list, in section IX, C. Private laterals are a significant source of overflows in many communities, and having the option of CWSRF loan funding will assist our member agencies in implementing lateral replacement programs. We also suggest that DFA consider a clarification to specifically include eligibility for recycled water onsite user retrofits on private property that is publicly funded. The Policy includes eligibility for recycled water onsite user retrofits on publicly owned use sites, but currently it does not specifically address the eligibility of privately owned properties. In addition, in section IX.C.1.r.vi, we suggest that “on publicly owned” be removed from the definition and replaced with the term “eligible,” because a retrofit project that includes expansion of pipelines may include multiple sites, both public and private, that should be retrofitted.

Finally, in Section IX.B.2.d.ii, it is not clear why non-water suppliers are required to comply with requirements related to water conservation. In addition, subsection iii appears to deal exclusively with water metering, so the words “Volumetric Pricing and” should be deleted from the heading.

Coverage, and Reserves and Cash Flows

At a high level, we understand that the SWRCB believes it has capacity constraints. While the proposed amendments add transparency and necessarily address issues related to prioritization for funding, nothing in the amendments address the fundamental underlying issue of capacity. CASA has submitted comments and spoken with DFA staff previously on ways to address capacity, including but not limited to offering planning/design assistance, providing multi-year

commitments, and co-funding. In addition to the separate planning and design approach noted above, we offer a few specific comments on coverage, reserves and cash flow:

- DFA and the SWRCB should consider selling bonds more often to reduce interest expenditures. We also suggest that you actively manage your reserves to increase investment earnings that can be utilized for additional project funding. We suggest you vary terms of loans based on credit worthiness of the borrower, potentially decreasing coverage and other requirements in exchange for slightly higher interest rates for borrowers with higher credit ratings.

We also support the new Credit/Financial Guidelines (CWSRF Appendix N) which should result in a more streamlined negotiation process. Specifically, we support improvements to the financial policy that take account of a borrower's credit rating and allow for State flexibility of loan terms, based on the borrower's credit risk. Considering a borrower's existing credit rating and allowing greater flexibility with CWSRF loan terms for those borrowers with strong credit can expedite the legal consultation process without increasing the program's financial risk. However, we suggest the following specific comments on CWSRF Appendix N:

- Add A.3.vii: "The Division may consider accepting a Recipient's alternative Debt Service Calculation assumptions." The SWRCB should allow some flexibility for how the interest on tax-exempt variable rate obligations is calculated, as there are additional industry-standard and market-accepted options for calculating interest on a tax-exempt variable rate obligation that are not reflected in the language of the current draft.
- We have specific suggestions related to the definition section (Section N) and adding a definition for the term "material debt", and also to Section B on Rate Covenants and Others Terms Dependent on Ratings. Those specific comments are attached hereto.

As the SWRCB is aware, we are very interested in opportunities for expanding the funding capacity of the program with an eye toward funding a greater share of the eligible project need. We already have had productive conversations with CWSRF staff on how we can work together toward this goal, and look forward to developing more specific proposals for your consideration in the year ahead.

Sincerely,



Adam D. Link
Director of Operations

State Water Resources Control Board

**Clean Water State Revolving Fund Policy
Proposed Amendments**

**Comments on Proposed Amendments from Piper Jaffray via CASA
October 19, 2018**

Piper Jaffray Contact: Greg Swartz, SRF/Utility Finance, 602-808-5426, greg.g.swartz@pjc.com

We appreciate the opportunity to comment on the proposed policy amendments. In particular, the proposed project priority list (PPL) scoring criteria will provide essential transparency moving forward and are as good as or better than scoring criteria adopted by other SRFs across the U.S.

With some enhancements, the proposed PPL scoring criteria will enable SWRCB to address and manage Clean Water SRF funding constraints. SWRCB can directly address and manage capacity constraints now and over the long-term by:

1. Creating separate priority lists for planning/design and construction assistance.
2. Awarding points to an applicant's project which previously received planning/design or construction assistance for the same project.
3. Awarding points to applicants which have obtained or in the process of obtaining co-funding.

More specifically, we recommend enhancing the policy as detailed below by recommendation. To facilitate the review and understanding of our recommendations, we are willing to incorporate text as tracked changes into SWRCB's proposed policy.

Recommendation 1: Separate Priority Lists for Planning/Design (PD) & Construction (CON)

Many applicants require additional time and resources to plan and design their projects to document project costs, refine project schedules, assess environmental impacts, and confirm other funding sources with greater certainty. SWRCB can create a separate PD Priority List using scoring criteria outlined in Recommendation 2 which is directly based on SWRCB's proposed policy.

In contrast, SWRCB can reserve the CON Priority List for applicants who previously received PD assistance or for applicants who completed PD with other resources. SWRCB can create a separate CON Priority List using scoring criteria outlined in Recommendation 3 which is also directly based on SWRCB's proposed policy.

With separate priority lists, SWRCB can strategically manage capacity constraints and be better positioned to project future funding requirements and demand.

Recommendation 2: PD Project Scoring Criteria

We recommend SWRCB score applicants/projects for PD assistance as follows:

	Primary Score (as proposed by SWRCB)
Plus:	Secondary Score (as proposed by SWRCB)
Plus:	Community Economic Status Score (as proposed by SWRCB)
Equals:	PD Project Score

To initiate scoring, we recommend that applicants must submit the General (application) Package and at least portions of the Financial Security Package to enable SWRCB to evaluate local fiscal capacity.

We recommend SWRCB set-aside 5-15% of annual funding for the PD Priority List depending upon demand and priorities. SWRCB can modify the PD fundable range based on applicants' pace.

Recommendation 3: CON Project Scoring Criteria

We recommend SWRCB score applicants/projects for CON assistance as follows:

	Primary Score (identical to PD Project Scoring Criteria)
Plus:	Secondary Score (identical to PD Project Scoring Criteria)
Plus:	Community Economic Status Score (identical to PD Project Scoring Criteria)
Plus:	Project Status Score (see Recommendation 4)
Equals:	CON Project Score

To initiate scoring, we recommend applicants must submit three application packages: General, Technical, and Financial Security. For those applicants who previously submitted a General Package for PD assistance, the applicant and SWRCB can update as required. Additionally, applicants must submit a substantially completed Environmental Package subject to refinement and modification as SWRCB conducts its due diligence and interacts with other state and federal agencies.

Recommendation 4: Project Status Score

As noted above in Recommendation 3 we recommend SWRCB include a Project Status Score when scoring applicants/projects for CON assistance.

The Project Status Score is based on SWRCB proposals for a Readiness Score with additions and modifications to enable SWRCB to directly address Clean Water SRF capacity constraints. We recommend SWRCB score applicants/projects for Project Status as follows:

	Complete Application (as proposed by SWRCB under its Readiness Score)
Plus:	Plans and Specifications (as proposed by SWRCB under its Readiness Score)
Plus:	Applicant Previously Received PD Assistance for the Project OR Applicant Previously Received CON Assistance for the Project
Plus:	Co-Funding ~ SWRCB would initially score and update the score as follows: High Co-Funding Score = Co-Funding Available, Awarded, or Issued Mid Co-Funding Score = Co-Funding Committed and Available in 6 Months Low Co-Funding Score = Applicant Seeking Co-Funding
Equals	Project Status Score

State Water Resources Control Board

**Clean Water State Revolving Fund Policy
Proposed CWSRF Appendix N ~ Credit/Financial Guidelines**

**Comments from Piper Jaffray via CASA
October 19, 2018**

Piper Jaffray Contact: Greg Swartz, SRF/Utility Finance, 602-808-5426, greg.g.swartz@pjc.com

Recommendations for Credit/Financial Guidelines, CWSRF Appendix N:

Recommendation 1: Add “Material Debt” to Definitions

“Material Debt” means debt of the applicant secured by and repayable from the pledged source of repayment and can include public offerings, placements, loans, notes, and other forms of fixed interest rate and variable interest rate debt.

Recommendation 2: Clarify Section B (marked changes to proposed Section B)

B. Rate Covenants and others Terms Dependent on Ratings

1. If an applicant’s outstanding material bond debt is rated ~~Aa-AA-~~ Aa3 or higher:
 - a. The Division may apply certain terms to the CWSRF financing, including definitions and rate covenants used by the applicant’s master trust indenture or similar debt document, as well as options for establishing and maintaining an unrestricted loan reserve fund.
 - b. The bond rating must from at least ~~two-one~~ major rating rate ~~agencies-agency~~ and issued within the 36 months of the CWSRF Financial Application Package submittal.
2. If an applicant’s outstanding material debt is a recent bond issuance rated below ~~Aa-BBB-~~ or Baa3 or is an unrated ~~private placement material debt~~:
 - a. The Division may apply certain terms to the CWSRF financing, including definitions and rate covenants used by the applicant’s master trust indenture or similar debt document, if (a) those requirements exceed the rate covenants set forth in this Policy or (b) the applicant’s recent financial history and its forecasted projections support a finding of minimal risk to the CWSRF.
 - b. The bond rating must from at least ~~two-one~~ major rating rate ~~agencies-agency~~ and issued within the 36 months of the CWSRF Financial Application Package submittal.
3. If an applicant has no outstanding material debt, the Division will apply the requirements set forth in the Policy.
4. The Division will evaluate draft documents, submitted by non-public agencies, in support of filing a UCC lien with the Secretary of State as loan security.

Unless clarified as recommended, all borrowers rated below AA-/Aa3 would receive more restrictive CWSRF terms and conditions than all non-rated borrowers. The market considers BBB-/Baa3 and higher as “investment-grade” and considers BBB-/Baa3 “lower medium grade” compared to A-/A3 or higher. Generally, BBB-/Baa3 up to AA-/AA3 should at least be equal or better than non-rated debt.