

**STATE
WATER
RESOURCES
CONTROL
BOARD**



**CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY**



**Policy for Implementing
the Clean Water State Revolving Fund**



*March 15, 2013,
DRAFT*

Amended
<Date>

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
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Amended <Date>

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POLICY FOR IMPLEMENTING THE CLEAN WATER STATE REVOLVING FUND

TABLE OF CONTENTS

<u>TOPIC</u>	<u>PAGE</u>
TABLE OF CONTENTS	i-ii
APPENDICES	iii
EXECUTIVE SUMMARY	iv
I. INTRODUCTION	1
II. PURPOSE AND OBJECTIVE	1
III. DEFINITIONS	1
IV. PROGRAM MANAGEMENT	5
A. Project List	5
B. Intended Use Plan and Capitalization Grant Applications	8
C. Interest Rate and Other Charges	9
D. Annual Report	9
V. MATCH FINANCING	9
A. Availability	9
B. Match Resolution	9
C. Match Terms	9
D. Match Disbursements	9
VI. REFINANCING	10
A. Existing Small Disadvantaged Community Debt	10
B. Refinancing for Financially Distressed Communities	11
VII. WATER RECYCLING AND SDAC PROJECTS	11
VIII. PLANNING/DESIGN FINANCING	11
A. Planning/Design Application Requirements	11
B. Eligible Planning/Design Costs	13
C. Planning/Design Financing Terms	14
D. Planning/Design Financing Approval and Agreement	15
E. Planning/Design Financing Disbursements	15
F. Planning/Design Financing Payments	16
G. Planning/Design Financing Record Keeping Requirements	16

IX.	PUBLICLY OWNED TREATMENT WORKS FINANCING	16
	A. General	16
	B. Application Requirements	17
	C. Eligibility	26
	D. Funding Limitations.....	29
X.	EXPANDED USE PROJECT FINANCING	30
	A. General	30
	B. Application Requirements	30
	C. Eligibility	30
XI.	CONSTRUCTION/IMPLEMENTATION FINANCING AGREEMENT	31
	A. Financing Approval	31
	B. Execution of the Financing Agreement.....	31
	C. Amended Financing Agreement	33
	D. Cost Increases	34
XII.	CONSTRUCTION/IMPLEMENTATION DISBURSEMENTS	34
	A. Disbursement Requests	35
	B. Initial Financing Agreement Disbursements	35
	C. Amended Financing Agreement Disbursement	35
	D. Final Disbursement.....	36
XIII.	CONSTRUCTION OR IMPLEMENTATION	36
	A. Pre-Project Conference or Media Events	36
	B. Inspections: Interim and Final.....	36
	C. Progress Reports	36
XIV.	PROJECT COMPLETION REPORT	37
XV.	RECORD KEEPING REQUIREMENTS	37
XVI.	CONSTRUCTION/IMPLEMENTATION FINANCING PAYMENTS	37
XVII.	BOARD RESERVATION OF AUTHORITY	38
XVIII.	DISPUTES	39

APPENDICES

- A. USEPA's Approvals of Extended Term Financing
- B. Operating Agreement between the California State Water Resources Control Board and the United States Environmental Protection Agency Region IX for Activities and Functions in Managing the State Water Pollution Control Revolving Fund Program
- C. Sample Match Resolution
- D. Water Recycling Funding Program Guidelines
- E. Application Package for Planning/Design Financing
- F. Sample Disbursement Request Forms and Instructions
- G. Application Package for Construction/Implementation Financing
- H. Water Conservation Guidelines
- I. State Environmental Review Process
- J. Final Budget Approval Form, Submittal Instructions, and DBE Compliance Guidelines
- K. Sewer System Evaluation Guidelines

EXECUTIVE SUMMARY

This Policy was written to implement the 1987 Amendments to the federal Clean Water Act (CWA), which created the Clean Water State Revolving Fund (CWSRF) Program. The CWSRF provides various types of assistance for construction of Publicly-Owned Wastewater Treatment Works (POTW), including sanitary sewer collection systems, sewer interceptors, water reclamation facilities, implementation of programs and projects to control pollution from nonpoint sources and storm water drainage, and development and implementation of estuary cleanup programs. The CWSRF Program offers low cost financing agreements for water quality projects.

I. INTRODUCTION

This Policy was written to implement the federal CWA's CWSRF Program in California. The federal CWA provides for the creation of a CWSRF Program capitalized by federal and state funds. The federal CWA authorizes financial assistance through loans and other financing mechanisms for construction of wastewater treatment and sewage collection systems, water recycling facilities, storm water projects, implementation of nonpoint source and storm drainage pollution control management programs, and for the development and implementation of estuary conservation and management programs. The CWSRF is intended to provide financial assistance in perpetuity using state and federal funds.

The *Policy for Implementing the Clean Water State Revolving Fund* addresses all eligible project types mentioned above. It is organized in order of project development, and it sets forth the requirements to obtain CWSRF financing.

The provisions of this amended CWSRF Policy are effective October 1, 2013, 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 CWSRF Program is to provide financing for (1) construction of wastewater treatment facilities, sewage collection systems, and sewage interceptors necessary to prevent water pollution or recycle wastewater, (2) implementation of nonpoint source and storm drainage pollution solutions, and (3) estuary enhancement, and thereby protect and promote the health, safety, and welfare of the inhabitants of the state.

The State Water Board also seeks to reduce the effects of climate change and to promote sustainable water resources for future generations. This Policy is designed to support these secondary objectives where economically and technically feasible. These secondary objectives must be cost-effective and essential components of projects that meet the federal and state criteria in the preceding paragraph and support the policy goals of the State Water Board.

III. DEFINITIONS

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

- (a) "Allowance" or "soft costs" means an amount of money for eligible planning, design, value engineering, construction management, and administration costs of the project.
- (b) "Applicant" means, for the purpose of a publicly owned treatment works project, a city, town, district, state agency, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under state law, having jurisdiction over disposal of sewage, industrial wastes or

other waste, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the federal CWA applying for CWSRF funding. For the purpose of an expanded use project, “applicant” includes the foregoing, as well as a 501 (c)(3) non-profit organization.

- (c) “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), including any amendments thereto.
- (d) “Capitalization Grant” means federal CWSRF funds granted to the State Water Board by the United States Environmental Protection Agency (USEPA) in a particular year pursuant to certain terms and conditions.
- (e) “CEQA” means the California Environmental Quality Act (commencing at Section 21000 of the Public Resources Code).
- (f) “Completion of Construction” means the date that the work of building and erection of the project is substantially complete. For expanded use projects this date will be the same as the date of completion of project implementation.
- (g) “Contingency” or “contingencies” means the amount budgeted for unforeseen costs. The contingency amount estimated in the CWSRF application can be used to pay for eligible change orders approved by the Division. Contingencies are subject to credit review and approval by the Division.
- (h) “Division” means the Division of Financial Assistance within the State Water Board or other Division assigned to manage the CWSRF Program.
- (i) “Eligible Project Cost” means that portion of the total cost of a project that is eligible for financial assistance from the CWSRF pursuant to federal and state laws, rules, regulations, policies, and guidelines.
- (j) “Environmental document” means a Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report (EIR) prepared in accordance with CEQA and associated supporting documents showing compliance with federal environmental laws.
- (k) “Estuary enhancement project” means a project that implements a Comprehensive Conservation and Management Plan established in accordance with Section 320 of the federal CWA.
- (l) “Executive Director” means the Executive Director of the State Water Board.
- (m) “Existing debt” means the applicant’s existing debt secured by the Pledged Revenues and Funds (PRF).
- (n) “Expanded Use Project” means a project in one of the following categories:
 - Storm Water Projects as long as they are not required as part of a National Pollutant Discharge Elimination System permit

- Implementation of a Nonpoint Source Project
 - Development & Implementation of Estuary Comprehensive Conservation and Management Plans
- (o) “Extended Term Financing” or “ETF” means financing for a term exceeding twenty (20) years but no longer than thirty (30) years, meeting the conditions and restrictions set forth by the USEPA. (See Appendix A.)
- (p) “Financial distress” or “financial emergency” means that a community has filed for bankruptcy protection in federal court or has taken either of the preliminary actions for bankruptcy protection pursuant to section 53760 of the Government Code. (See Appendix A.)
- (q) “Financing agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the applicant, setting forth the terms, provisions, and conditions governing the CWSRF financing and the repayment, if any. This document may be a loan, an installment sale agreement, a grant, or another financing instrument.
- (r) “Infiltration” is groundwater entering a sewer system due to defective pipes, pipe joints, connections, manhole walls, or similar defects. Infiltration is distinct from inflow.
- (s) “Inflow” is the water entering a sewer system from roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, drainage, or similar sources. Inflow is distinct from infiltration.
- (t) “Initiation of Construction” or “Implementation” means the date that the Notice to Proceed with the work is issued for the project, or if no notice is required, the date of commencement of building, erection, or implementation of the project.
- (u) “Intended Use Plan” or “IUP” means the annual document that the State Water Board submits to USEPA that contains the business plan for the CWSRF and identifies the projects that the State Water Board expects to fund during the year.
- (v) “Nonpoint Source project” or “NPS project” means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture consistent with the NPS Implementation Plan.
- (w) “Operating Agreement” means the *Operating Agreement between the California State Water Resources Control Board and the United States Environmental Protection Agency Region IX for Activities and Functions in*

Managing the State Water Pollution Control Revolving Fund Program, dated November 2012. (See Appendix B)

- (x) “Publicly Owned Wastewater Treatment Works” or “POTW Project” means any distinguishable segment, or segments, of a publicly owned treatment facility or treatment works described in the approved financing agreement, which can be bid separately, and for which CWSRF financial assistance is sought or provided.
- (y) “Private lateral” means a sewer pipe from the public right-of-way to a residential, commercial, institutional, or industrial structure.
- (z) “Project” means the Expanded Use or POTW project for which CWSRF financing is sought or provided.
- (aa) “Project List” means the list prepared pursuant to section 603(g) of the CWA.
- (ab) “Reclaimed Water” or “Recycled Water” means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.
- (ac) “Recipient” means an applicant with an executed CWSRF financing agreement signed by all parties.
- (ad) “Refinancing” means the use of CWSRF monies to payoff debt related to an otherwise eligible CWSRF project and provide CWSRF financing in its place.
- (ae) “Regionalization” means the merging of existing sewage collection and/or wastewater treatment systems to provide consolidated collection and treatment to reduce costs, increase reliability, or decommission facilities. (See Appendix A)
- (af) “Regional Water Board” means the appropriate California Regional Water Quality Control Board.
- (ag) “Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration or Inflow.
- (ah) “Small Community Grant” or “SCG” means a grant funded by the charge authorized by Section 13477.6 of the California Water Code. Revenues from the SCG charge are utilized for grants to SDACs (see definition ai) for wastewater projects.
- (ai) “Small Disadvantaged Community” or “SDAC” means a community with a population of less than 20,000, and either: (1) a community Median Household Income (MHI) of less than eighty percent (80%) of the statewide

MHI; or (2) a community sewer rate of more than four percent (4%) of the community's MHI.

- (aj) "State Water Board" means the State Water Resources Control Board.
- (ak) "Storm water Project" means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or groundwaters of the state and the reuse or disposal of storm water determined acceptable for reuse or disposal.
- (al) "Sustainability" means balancing economic, environmental, and social factors in an equitable manner to maintain and protect the water resource needs of the present generation without compromising the ability of future generations to meet their own water resources needs.
- (am) "Treatment facilities" or "treatment works" means any device or system used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes of a liquid nature to implement the federal CWA, or necessary to recycle or reuse water at the most economical cost over the estimated life of the facilities, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other method or system to prevent, abate, reduce, store, treat, separate, or dispose of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.
- (an) "Useful life" means the estimated period of time over which the CWSRF-funded facility will serve its intended purpose in a cost-effective manner from the estimated initiation of operation date.
- (ao) "USEPA" means the United States Environmental Protection Agency.

IV. PROGRAM MANAGMENT

A. Project List

The primary purpose of the Project List is to identify potentially eligible future projects and prioritize the marketing, assistance, and application review efforts of Division staff and management. A project must be included on the current Project List to be approved for financing per section XI.A of this Policy. Placement of a project on the Project List shall not constitute a commitment to provide financing.

1. Development of Project List

- a. The Project List identifies projects potentially eligible for assistance from the CWSRF program. As the Division receives CWSRF applications or inquiries from applicants, it will assign to each project a Project class from section IV(A)(2) and Sustainability points from section IV(A)(3). The Division will recommend to the Executive Director, in consultation with the appropriate Regional Water Board, if necessary, whether the project should be added to the Project List.
 - b. The Executive Director will generally update the Project List quarterly. The Executive Director may update the Project List more frequently if necessary or less frequently if there are no new potential projects to be added during the quarter. The Division will promptly post the Project List on the web after the Project List has been updated by the Executive Director.
2. Priority Classes

Each project is assigned to one of the following priority classes:

- a. A - Public Health Problems
 - i. POTW projects or other projects required to alleviate public health problems where the County Board of Supervisors, City Council, or the County Health Officer has certified that a health problem exists, and where a State or Regional Water Board has (1) adopted a prohibition for elimination of discharges and such prohibition has been approved by the State Water Board, (2) approved a local moratorium prohibiting the construction of new systems, or (3) adopted a cease and desist order; or
 - ii. Nonpoint source, storm water drainage pollution, and estuary enhancement projects required to comply with prohibitions, postings, limitations, or warnings that have been imposed by responsible health authorities, and where the State or Regional Water Board has concurred with the findings of the health authority and has established a time schedule for correction or elimination of the threat to public health.
- b. B - Pollution of Impaired Water Bodies
Projects required to correct conditions where the Regional Water Board Executive Officer certifies that the water quality objectives for water body listed on the CWA 303(d) list are not being attained.
- c. C - Compliance with requirements or Water Recycling Projects
 - i. Projects necessary to comply with WDRs or other regulatory requirements formally imposed by the State Water Board or Regional Water Board, or projects necessary for correction of threatened violations of existing or proposed WDRs; or
 - ii. Projects that provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for

uses that will offset or augment state and local water supplies or projects that are necessary to meet state policy regarding recycled water.

- d. D - Projects Serving as Preventative Measures against additional Water Quality Degradation for Impaired or Unimpaired Water Bodies
Projects to control discharges to impaired or unimpaired waters, where correction of such discharges may, or may not, be required through formally adopted WDRs. This class includes projects to provide additional wastewater treatment capacity.
- e. E - Other Projects
Projects not included in any of the other priority classes.

3. Sustainability

A project that supports or incorporates one or more of the following sustainability goals receives one priority point for each area addressed:

- a. The project supports infill development or results in the reuse or redevelopment of land in an area presently served by transit, streets, water, sewer, and other essential services.
- b. The applicant maintains a capital improvement plan, an asset management plan, or has performed a full-cost pricing analysis.
- c. The project protects environmental or agricultural resources such as farm, range and forest lands; wetlands and wildlife habitats; recreational lands such as parks, trails, and greenbelts; or landscapes with locally unique features or areas identified by the state as deserving special protection.
- d. The project is cited in one or more regional environmental management plans.
- e. The project incorporates wastewater or storm water/urban runoff recycling, water conservation, energy conservation, low impact development, or reduced use of other vital resources
- f. The project uses low-impact treatment for lower lifecycle operating costs through reduced energy, chemical, or other inputs.

4. Restrictions and Adjustments

- a. If a project falls in more than one class, the Executive Director will place the project in the highest class applicable to the more costly segment of the project, unless directed otherwise by the State Water Board.
- b. In the event that project classification or sustainability points changes in between updates to the Project List, the Executive Director will adjust the classification in the next update.

5. Funding of Projects

The Division will review projects on the Project List with complete applications, except as directed by the State Water Board, based on the project class, A being the highest class and E being the lowest class, and the number of sustainability points. Projects within each project class will be ranked according to their sustainability points. If the State Water Board lacks sufficient funds to fund all projects with complete applications, then the Division will first fund projects based on the classes established above, giving priority within the class to the SDAC with the lowest median household income, and then to the project that most effectively addresses sustainability and global climate change.

6. Project Removals

- a. The Division will monitor progress of projects on the Project List to ensure that applicants and potential applicants are proceeding expeditiously with their projects.
- b. The Executive Director will remove any project from the Project List when:
 - i. The State Water Board so instructs;
 - ii. The project has received CWSRF financing or alternate financing;
 - iii. The applicant requests to be removed; or
 - iv. The project has been on the list for at least four consecutive quarters and the applicant has been non-responsive or has not requested that the project remain on the Project List.
- c. Projects that were removed because applicants were non-responsive may be added again in the future.

B. Intended Use Plan and Capitalization Grant Applications

1. At least annually the Division will prepare an IUP for the State Water Board's consideration for delivery to the USEPA. The State Water Board may establish various requirements/conditions/incentives in the IUP. The IUP will discuss the availability of extended term financing, principal forgiveness, and the application of financing service charges and information necessary to satisfy USEPA's review. The Executive Director may amend the IUP for good cause after public review.
2. The Executive Director may apply for and accept Capitalization Grants and approve amendments to the Capitalization Grants.
3. The State Water Board may reserve funds for selected classes or types of projects.

C. Interest Rate and Other Charges

1. Generally, the interest rate for CWSRF financing agreements is one-half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Division prepares the financing agreement or the State Water Board approves the financing, whichever is first, rounded up to the nearest 0.1 percent.
2. Each year in the IUP, the State Water Board sets any administrative service charge, Small Community Grant (SCG) funding charge, and incentives. The administrative service charge provides funding for administration of the CWSRF Program, and the SCG funding charge provides a source of grant funding for SDAC wastewater projects. Where a financing agreement includes any such charge, the interest is correspondingly reduced so that the combined payment of principal, interest, and charge(s) is the same regardless of whether a charge is applied.

D. Annual Report

The Division will prepare an Annual Report for USEPA that describes how the CWSRF Program met the objectives identified in the previous year's IUP.

V. **MATCH FINANCING**

The State of California must provide a match equal to 20 percent of the federal Capitalization Grants. The State Water Board may offer a reduced interest rate to applicants that provide this match funding.

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 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 match in the amount and at the times necessary to complete the project. Appendix C contains a model resolution.

C. Match Terms

The interest rate on match financing agreements will be zero (0) percent. The payment period is 20 years, or up to 30 years for ETF. The principal amount of the financing agreement includes both the amount received from the State Water Board and the match contributed by the recipient. Planning, design, and expanded use financing agreements cannot use match financing.

D. Match Disbursements

1. Allowances (Soft Costs)

The recipient must certify that it has paid at least the match portion (16.67 percent) of the incurred allowance costs. The Division will then disburse the remainder of the allowance requested (83.33 percent).

2. Construction or Equipment Procurement Costs

The recipient must pay the match for each construction contractor's or vendor's invoice (16.67 percent of each invoice), or it can pay the full eligible amount of the contractors' or vendors' invoices until it has paid an amount equal to the match portion of the financed amount (16.67 percent of the financed amount). After full payment of the match, the recipient may request the remainder of the CWSRF financing amount (83.33 percent of the financed amount).

3. Match Certification and Documentation

The recipient must submit to the Division certification of payments to the contractor(s) or vendor(s). The Division will disburse 83.33 percent of the eligible financing amount, provided the recipient has certified that all past disbursements have been paid to the contractors or vendors and submitted copies of the canceled checks or other documentation of payment acceptable to the Division, on a quarterly basis, documenting payment of CWSRF funds disbursed from the CWSRF and the match amounts to the contractors or vendors.

VI. **REFINANCING**

A. Existing SDAC Debt

1. Existing non-CWSRF debts may be refinanced with CWSRF funds if the Division determines that all of the following conditions exist:

- (a) The applicant is a SDAC;
- (b) The applicant's debt was incurred for an eligible CWSRF project to construct or repair an existing facility that falls within any of the five CWSRF classes discussed in section IV above;
- (c) The existing debt(s) were the result of external borrowing by the applicant; and
- (d) Refinancing the debt is necessary to complete a new project in any of the five CWSRF classes at a payment that is affordable for the SDAC.

2. Refinancing for projects completed after October 30, 2009, must comply with Davis Bacon requirements. (See section XI(B)(6) of this Policy) Projects

completed after October 30, 2009, that did not comply with Davis Bacon are not eligible for refinancing.

B. Refinancing for Financially Distressed Communities

The State Water Board may provide ETF to restructure existing CWSRF obligations, consistent with USEPA's approval, for financial distress or financial emergencies, as further discussed in Appendix A.

VII. WATER RECYCLING AND SDAC PROJECTS

- A. Water recycling projects generally serve one of two purposes: (1) meeting pollution control needs as specified in waste discharge requirements issued by the Regional Water Board or (2) meeting water supply needs. The State Water Board will fund CWSRF water recycling projects that meet pollution control needs in accordance with this Policy, while projects meeting water supply needs must also meet the requirements of the Water Recycling Funding Program (WRFP) Guidelines. (See Appendix D)
- B. The State Water Board funds SDAC wastewater projects in accordance with this Policy. Any incentives available to these projects, including extended term financing, principal forgiveness, or grants available as a result of the SCG charge, are described in the CWSRF IUP.

VIII. PLANNING/DESIGN FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix E contains the application for planning/design financing.

A. Planning/Design Application Requirements

If the applicant intends to refinance the planning/design financing principal as part of a CWSRF construction/implementation financing agreement, then the Plan of Study must ensure development of all documents necessary for construction or implementation financing approval. (See Section IX or X of this Policy.) All planning/design work identified in the scope of an executed planning/design financing agreement must be completed prior to approval of a construction or implementation financing agreement.

The application for planning/design financing must include the following two packages:

1. Technical package consisting of the following:
 - a. The Plan of Study must include the following:

- i. Explanation of water quality problem to be addressed (including information about existing or pending enforcement actions);
 - ii. Scope of Work;
 - iii. Budget;
 - iv. Schedule (including deliverables and submittal dates);
 - v. If the Plan of Study includes design work, it should explain the status of planning work; and the Division may request to review existing planning documents prior to approving design financing; and
 - b. Water Rights (See section IX(B)(2)(a)(i) of this Policy for requirements.)
 - c. Urban Water Management (See sections IX(B)(2)(c)(ii)(A) and IX(B)(2)(c)(ii)(C) of this Policy for requirements.)
2. The Financial Security package consists of the following:
- a. Authorizing resolution/ordinance: The applicant must submit a resolution or ordinance adopted by its governing board authorizing the application and designating an Authorized Representative (by title) to sign the CWSRF financing agreement and make other certifications.
 - b. Relevant service, management, operating, or joint powers 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 the parties.
 - c. Financial statements and security: The applicant must provide three years of financial statements, preferably audited. The financial statements may include the current year (if available), and two years prior, or the three previous years if the current year's statements have not been completed.
 - d. Legal Opinion(s):
 - i. The applicant will be expected to submit an opinion from counsel regarding the validity of the financing agreement and the supporting resolutions, lack of conflict and affirmative compliance with applicable laws and material obligations, pending or existing litigation or disputes, and lack of untrue, misleading, or incomplete representations.
 - ii. Where the applicant has material bond debt, the applicant will be expected to submit an opinion from bond counsel regarding lack of conflict between the CWSRF financing agreement and the material bond obligation.

- iii. The applicant must address any pending litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program.
- iv. Any issues related to the above, including but not limited to rate setting, litigation, audit findings, disputes, and property rights, where relevant to the project security, or the applicant's commitments under the CWSRF financing agreement are expected to be resolved prior to execution of the CWSRF financing agreement and may require State Water Board approval of the financing.
- e. Pledged Revenue and Funds (PRF) resolution/ordinance: This item is not required if the applicant is a SDAC applying for one hundred percent grant funding. All other applicants must submit a resolution or ordinance adopted by the governing board that pledges one or more sources of existing revenue and funds as security for the CWSRF financing agreement. A reserve fund may also be required. (See Appendix E of this Policy for sample resolution.)
 - i. 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.
 - ii. The applicant's governing board must adopt the ordinance or resolution pledging the PRF before approval of the CWSRF financing.
- f. Existing debt:
 - i. If the applicant has no other debts, this fact must be verified by the Agency's Authorized Representative.
 - ii. This item is not required if the applicant is a SDAC applying for one hundred percent grant funding.
 - iii. The applicant must submit a schedule of all debt secured by the PRF. It must also submit a copy of each relevant debt document (e.g. Indenture, Installment Agreement, loan, note, etc.). The CWSRF financing agreement will include this schedule as an exhibit, identifying the priority position of each debt in relation to the proposed CWSRF obligation (senior, parity, or subordinate). In most cases, the proposed CWSRF debt will be a senior obligation.

B. Eligible Planning/Design Costs

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

- a. Feasibility studies/project reports
 - b. Plans and specifications
 - c. Financial analyses
 - d. Value engineering
 - e. Environmental documents
 - f. Capital improvement plans
 - g. Water conservation plans
 - h. Sewer system evaluation/surveys
 - i. Environmental management systems
 - j. Asset management systems
2. Planning/design costs incurred prior to the eligible start date of the agreement are ineligible. The eligible start date will be no earlier than the date the planning/design financing application is submitted to the Division.
 3. The applicant must complete the planning process prior to approval of construction/implementation financing. Construction management costs and administration costs associated with construction/implementation may be included in the construction financing agreement and are not eligible for reimbursement under the planning/design financing agreement.

C. Planning/Design Financing Terms

1. Draw Period
 - a. The draw period may be up to three years from the date of the planning/design financing agreement.
 - b. The Deputy Director of the Division or designee may extend the draw period for good cause.
2. Interest rate: The interest rate shall be zero (0) percent during the draw period. If the applicant does not refinance the principal as part of a construction or implementation financing agreement, either with the CWSRF or another financing source, then the interest rate will be determined by section IV(C) of this Policy. Interest will accrue from the date of each planning/design disbursement and continue to accrue until the agreement is fully amortized. If the principal is refinanced per section VIII(C)(4), then interest will accrue per section VIII(C)(4)(b).

3. Amortization period: Repayments will be amortized by equal annual payments over five or ten years, whichever the applicant selects, unless refinanced per section VIII(C)(4).
4. Refinancing
 - a. The planning/design agreement may be refinanced as part of a CWSRF construction/implementation financing agreement prior to the end of the draw period. No refinancing will occur after the end of the draw period, unless approved by the State Water Board at a State Water Board meeting.
 - b. Interest will accrue on the planning/design agreement balance beginning the eligible start date of the construction/implementation financing agreement per the terms of the construction/implementation financing agreement.
5. Additional Debt: The applicant's additional obligations secured by the PRF must meet the conditions of section IX(B)(4) of this Policy.

D. Planning/Design Financing Approval and Agreement

1. A project need not be listed on the Project List to receive planning/design financing. For routine, noncontroversial projects, the Executive Director, Deputy Director, or designee, of the Division may approve and execute planning/design financing agreements. Non-routine or controversial projects will be considered by the State Water Board at a State Water Board meeting.
2. Upon review and approval of required documents, the Division will prepare a financing agreement. The Division will not disburse funds until after the financing agreement is executed, and any disbursements are entirely conditioned on such execution.

E. Planning/Design Financing Disbursements

1. The Division will disburse eligible costs after the financing agreement is executed. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements. Appendix F contains specific instructions for requesting disbursements.
2. The recipient must submit all draft deliverables prior to disbursement beyond 70 percent of the financing amount, and it must submit all final deliverables to the Division prior to disbursement beyond 90 percent of the financing amount.
 - a. If the recipient intends to refinance the planning/design principal as part of a CWSRF construction/implementation financing agreement, approval of the construction/implementation financing will constitute Division acceptance of the final deliverables.

- b. For short term financings for the preparation of planning/design documents not refinanced as part of a construction or implementation agreement, the Division will issue a letter accepting completion of the original scope of work, as appropriate.
3. The Division must receive the final disbursement request prior to the end of the draw period. As a courtesy, the Division will normally send a reminder notice approximately three months before the final disbursement request date (end of draw period), but prompt submittal remains the responsibility of the recipient. If the Division does not receive the final disbursement request prior to the end of the draw period and has not approved an extension of the draw period, it will deobligate the undisbursed balance of the CWSRF financing agreement.

F. Planning/Design Financing Payments

1. The first annual payment will be due one year following the end of the draw period. As a courtesy, the Division will issue a revised payment schedule after the recipient submits an acceptable final disbursement request.
2. All payments must be sent to the address referenced in section XVI(E) of this Policy.
3. The grace period is specified in section XVI(D)(2) of this Policy.

G. Planning/Design Financing Record Keeping Requirements

The recipient must maintain records as described in section XV of this Policy.

IX. PUBLICLY OWNED TREATMENT WORKS FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix G contains the application for construction/implementation financing. Publicly owned treatment works includes all projects meeting the definition of “treatment works” in the CWA (33 U. S. Code § 1293), including but not limited to, wastewater infrastructure such as treatment plants, sanitary sewer systems, pumping stations, force mains, and solids handling equipment; storm water treatment and abatement measures required by a National Pollutant Discharge Elimination System permit and publicly owned; and leachate treatment systems at publicly owned landfills. Applicants should contact the Division for assistance with eligibility determinations.

A. General

1. The application is organized into four packages: 1) general information, 2) technical, 3) environmental, and 4) financial security. The Division will accept partial packages and applications, but will process complete

applications ahead of incomplete applications consistent with section IV(A)(5) of this Policy. Applicants should submit the complete application for review in advance of the ten percent (10%) design level effort.

2. To expedite financing, the Division will assist applicants with specific program requirements during the application review. The Division may also offer limited assistance to qualified applicants to bolster their administrative and managerial capacity.
3. To assist potential applicants with financing long-term capital needs, the Division will work diligently with applicants to obtain regular updates and maintain on file reports/plans/documents that fulfill the requirements of this section to minimize the resubmission of information needed for a complete project application.

B. Application Requirements

1. General Information Package

This package includes basic applicant and project information.

2. Technical Package

a. 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 CWSRF 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 must be filed and approved with the State Water Board's Division of Water Rights for the project.

b. Project Report

The applicant must submit a project 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 Division staff with sufficient information to evaluate whether the project is eligible for CWSRF financing, meets applicable technical requirements, and is likely to meet applicable water quality objectives and standards.

Division staff may require the applicant to submit additional information to assess the project's ability to meet water quality objectives or plans.

- c. Water Conservation and Urban Water Management (See Appendix H for guidance.)
 - i. Water Conservation
 - (A) If the applicant is a water supplier, the State Water Board will not execute a CWSRF financing agreement until the applicant has adopted a Water Conservation Program consistent with local ordinances and authorities.
 - (B) In lieu of adoption of an independent Water Conservation Program, the applicant may:
 - (1) Become a signatory to the "Memorandum of Understanding Regarding Urban Water Conservation in California," September 1991, California Urban Water Conservation Council, which may be modified to suit local conditions, or
 - (2) Submit an Urban Water Management Plan per Water Code Section 10653.
 - (C) If the applicant is not a water supplier, it must:
 - (1) Certify that seventy-five (75) percent of the water connections in its service area are covered by an adopted, Division-approved Water Conservation Program or
 - (2) Demonstrate that the water supplier(s) have signed the Memorandum of Understanding, referred to above, covering at least seventy-five (75) percent of the water connections within the applicant's sewer service area or
 - (3) Demonstrate that the water supplier has submitted an Urban Water Management Plan to the Department of Water Resources as discussed above.
 - (D) The Division may waive the above Water Conservation requirements if:
 - (1) The water supplier(s) for the community serve 3,000 or fewer customers and
 - (2) The costs to comply with the Water Conservation requirements are found by the Division to be burdensome to the supplier in light of the benefits derived from the Water Conservation Program.

- (E) The Water Conservation Requirement is not applicable to an expanded use project.
- ii. Urban Water Management
- (A) The Urban Water Management Planning Act requires every urban water supplier to prepare and adopt an Urban Water Management Plan that includes specific elements. (Water Code §10631.5.) Urban water suppliers, 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 are subject to this Act. Applicants that are urban water suppliers must comply with this Act to receive financing.
- (B) Effective January 1, 2009, eligibility for any water management project grant or loan made to an urban water supplier awarded or administered by the Department of Water Resources (DWR), the State Water Board, or the California Bay-Delta Authority requires the applicant to implement water Demand Management Measures (DMM) as described in Water Code Section 10631.5. Water management projects include projects that provide surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. Water Code Section 10631.5 requires that DWR determine if an urban water supplier is implementing water DMM described in Water Code Section 10631. The financing for any water management project will not be approved until such determination is made by DWR.
- (C) Volumetric Pricing and Water Metering
- (1) Section 529.5 of the Water Code, provides that urban water suppliers must meet certain volumetric pricing and water metering requirements in order to apply for state financial assistance for the following types of projects:
- wastewater treatment projects
 - water use efficiency projects (including water recycling projects)
 - drinking water treatment projects
- (2) For the purposes of compliance with this section, a “water use efficiency project” means an action or series of actions that ensure or enhance the efficient use of water or result in the conservation of water supplies.
- (3) All applicants must certify compliance with the water metering requirements.

d. General Plans

- i. If the applicant is responsible for adopting the General Plan(s) for the area(s) affected by a proposed project, the Division may not approve financing for the project until the applicant's authorized representative has certified that the applicant has adopted the land use and housing elements of its General Plan as required by section 65302 of the Government Code and that the project is consistent with the adopted General Plan.
- ii. If the applicant is not responsible for adopting the General Plan(s) for the area(s) affected by the project, then the Division may not approve financing until the applicant's authorized representative certifies that at least seventy-five (75) percent of the area affected by the project includes cities and counties with adopted land use and housing elements. The applicant's authorized representative will also certify that the applicant notified the agency(ies) responsible for adopting the General Plan(s) and provided a reasonable opportunity to comment on the project's consistency with the General Plan(s). The applicant's authorized representative must certify that the applicant considered those comments during development of the project.

3. Environmental Package

a. General

The applicant must provide adequate and complete environmental documentation 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 H.) This process is functionally equivalent to the National Environmental Policy Act (NEPA) and addresses the federal environmental review requirements known as the "federal cross-cutters." (40 CFR, § 35.3145.) It also complies with the CEQA Guidelines.

b. Environmental Analysis Documents

- i. The applicant must provide the final, project-specific environmental document, associated reports, and supporting documents showing compliance with CEQA to receive CWSRF construction or implementation financing approval. An applicant may use a previously prepared CEQA document, provided it is consistent with section 15153, 15162-15164, 15168, or 15221 of the CEQA Guidelines, and the CEQA document provides an adequate project-specific environmental analysis. The environmental documents must analyze the items outlined in the SERP, consistent with regional wastewater treatment plans, basin plans, and plans developed under section 208 of the

CWA. The applicant must provide supporting documentation for the State Water Board to show compliance with federal environmental cross-cutters and to complete federal consultation, if required.

- ii. If the applicant certified the environmental analysis document more than five years before the expected date the financing agreement will be executed or if the environmental document does not provide a project-specific environmental analysis, the applicant must re-evaluate the project's environmental conditions in an updated environmental document (e.g., Addendum, Supplemental, or Subsequent environmental document) and complete the applicable public participation requirements. The applicant must provide a copy of the final updated environmental document and the corresponding public participation and notification documents.

c. Document Preparation, Consultation, and Certification

- i. The applicant must follow the CEQA Guidelines and complete the CEQA process as a lead or responsible agency, or provide the State Water Board with adequate information for it to complete an environmental analysis if CEQA does not apply to the applicant. If the applicant is a responsible agency under CEQA and is using a lead agency's CEQA document, the applicant must also adopt/certify the CEQA document using the required public process, including the appropriate mitigation measures, and complete its own CEQA findings and determinations.
- ii. Early in the planning stage, the applicant should consult with 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. The applicant should also consult with the Division to ensure that it meets all CWSRF environmental requirements. The State Water Board can coordinate consultations with the appropriate federal authorities when an environmental compliance issue arises or with other federal agencies that have roles in approving or financing the project.
- iii. If CEQA applies to the applicant, the applicant must submit the draft CEQA document, to the State Clearinghouse within the Governor's Office of Planning and Research for distribution and comment. This requirement also applies to any Addendum, Subsequent, or Supplemental environmental documents of previously prepared CEQA documents.
- iv. All applicants, whether lead or responsible agencies under CEQA, if CEQA applies to the applicant, must file either a Notice of Determination or a Notice of Exemption with the State Clearinghouse immediately following the applicant's project approval and adoption/certification of the CEQA document and findings.

d. The State Water Board's Role

- i. The State Water Board is generally a responsible agency under CEQA and will complete its environmental review and make findings and determinations consistent with the CEQA Guidelines and the Operating Agreement based on the adequacy and completeness of the applicant's environmental analysis documents.
- ii. The State Water Board will consider any comments received on the draft CEQA document and will require the applicant to resolve or address any issues that arise from comments. The applicant must resolve all environmental issues, including obtaining the appropriate permits and approvals (i.e., concurrences/approvals under section 7 of the federal Endangered Species Act, section 106 of the National Historic Preservation Act, and sections 401 and 404 of the CWA [permit/certification]) prior to financing approval. The financing agreement may include applicable terms and conditions of the permits and approvals.
- iii. The State Water Board will file the appropriate public notification with the State Clearinghouse following its funding decision for a project.

4. Financial Security Package

a. General Requirements

- i. The Division will review the financial security documents to determine the applicant's credit capacity.
- ii. If the applicant's finances cannot support the funding request, Division staff will work with the credit consultant and the applicant to find a way to finance the project(s), if feasible.

b. Reserve and Coverage

- i. The applicant will be expected to establish and maintain, until the financing agreement is repaid, 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 applicant must comply with existing coverage covenants or with CWSRF coverage requirements, whichever covenants or requirements provide greater coverage. Where a CWSRF obligation will be within the applicant's top tier of related debt (senior level), the CWSRF coverage requirement is 1.1 times the highest year's debt service after completion of project construction. Where a CWSRF obligation will be subordinate level debt, the CWSRF coverage requirement is 1.2 times the highest year's projected debt service.

c. Additional Debt

- i. The State Water Board expects the CWSRF debt obligation to be a senior debt obligation.
- ii. Additional obligations secured by the Pledged Revenue and Funds (PRF) may be senior to CWSRF obligations under the following conditions:
 - (A) The CWSRF agreement provides for 100 percent forgiveness of principal; or
 - (B) The senior obligation(s) predates the CWSRF obligation, the applicant meets the coverage requirements of section IX(B)(4)(b) of this Policy, and the Deputy Director of the Division determines that such additional obligation(s) will not negatively affect existing or proposed CWSRF bonds; or
 - (C) The senior obligation meets the conditions set forth in paragraph iv. of this section.
- iii. Additional obligations secured by the PRF may be on parity with the CWSRF obligations under the following conditions:
 - (A) The applicant's non-subordinate debt is rated "A," or higher, by at least two of the three nationally recognized rating agencies; or
 - (B) The applicant is a SDAC and the Division determines that the applicant meets the coverage requirements of section IX(B)(4)(b) and:
 - (1) It would be economically burdensome for the applicant to obtain nationally recognized ratings; or
 - (2) Requiring additional debt to be subordinate to the CWSRF obligation will unduly restrict the applicant from obtaining future system debt necessary for water quality improvements.
- iv. The applicant may refund senior debt with new senior debt if all of the following conditions are met:
 - (1) The new senior debt refunds or refinances existing debt senior to an existing CWSRF obligation;
 - (2) The new senior debt has the same or earlier repayment term as the refunded senior debt;
 - (3) The new senior debt service is the same or lower than the existing debt service; and

- (4) The new senior debt will not diminish the applicant's ability to repay its CWSRF obligation(s).

d. PRF resolution

The applicant must submit a resolution or ordinance adopted by its governing board that pledges one or more sources of existing revenue and funds as security for the CWSRF financing agreement. See Appendix G of this Policy for a sample resolution. A restricted reserve will also be required in most cases. 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.

e. Existing Debt

- i. If the applicant has no other debt, the Agency's Authorized Representative must verify this.
- ii. The applicant must submit a schedule of all debt secured by the PRF, along with a copy of each relevant debt document. This schedule will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the proposed CWSRF debt (senior, parity, or subordinate).

f. Future Capital Needs

The applicant must describe its capital improvement plans and the long-term indebtedness needed to fund its future capital improvements. The applicant must provide any formal capital improvement plan it has to the Division.

g. Financial Statements and Budget

- i. The applicant must provide three 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 is not yet completed. The applicant must provide any adopted budget for future year(s).
- ii. The applicant must identify any restricted funds and the reason for the restrictions.
- iii. The applicant must identify all sources of security to be pledged. 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.

h. Tax Questions

The applicant must provide certain information for the State Water Board's tax counsel to assess the applicant's ability to receive CWSRF funds from tax-exempt revenue bond proceeds.

i. Applicant Resolution(s)/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 financing agreement signatory. The applicant must submit a reimbursement resolution meeting the reimbursement requirements for compliance with federal tax laws.

j. Material events, existing debt, and debt limits

i. The applicant must submit information regarding current, prior, or pending material events (bankruptcy, defaults, litigation, Grand Jury findings/indictments).

ii. The applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the CWSRF financing agreement.

iii. The applicant must identify any debt limit to which it is subject.

k. New Tax, Fee, Charge or Assessments Projections

If a new tax, fee, charge, or assessments will be a PRF, provide budget projections based on the proposed taxes, fees, charges, or assessments.

l. Extended Term Financing Analysis

Applicants requesting ETF must provide an affordability analysis and a useful life analysis to show that the useful life is at least equal to or greater than the financing term and the requested term is necessary to make the project affordable.

m. Relevant service, management, operating, or joint powers 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. Legal Opinion(s)

i. The applicant must meet the requirements of section VIII(A)(2)(d) of this Policy; and

- ii. The applicant will be expected to submit an opinion from counsel that applicant has sufficient property rights in the land used for all portions of the project to enable it to access, construct, operate, maintain, and allow for outside inspections of the project throughout the CWSRF financing term.

C. Eligibility

To the extent consistent with federal and state authority, the following are categories of eligible and ineligible costs. The applicant's engineer must segregate the eligible and ineligible items.

1. Eligible Project Costs

- a. Treatment facilities, including new collection systems to serve existing homes or businesses or new development in infill areas within the existing service area, alternative treatment facilities such as leachfields, mound systems, and constructed wetlands, purchase of lands, rights-of-ways, and easements for land that will be an integral part¹ of the treatment process or will be used for sludge disposal, and equipment or systems to reduce energy use or reduce the effects of climate change.
- b. Pre-purchased material and equipment used in the project and purchased in accordance with state law;
- c. Reserve capacity for treatment plants, pump stations, and pipelines per section IX(D)(1) below;
- d. Administration, maintenance, and laboratory building space directly related to the operation of the eligible facilities;
- e. Process control systems;
- f. Mitigation measures (except for land purchase) mandated by state and/or federal agencies;
- g. Contingency for change orders approved by the Division for increased costs provided the costs are eligible, consistent with the original scope of the project and the credit review. The contingency amount will be included in the financing agreement.
- h. Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the Water Recycling Funding Program (WRFP) Guidelines in Appendix D;

¹ Integral part means the land is being used in the treatment process. Land that is needed to build a new treatment process such as a clarifier, disinfection system, etc. is not considered an integral part in the treatment process and is not an eligible cost. Land for disposal (i.e., for spray irrigation or percolation ponds) is not eligible.

- i. On-site solids handling systems necessary to meet Regional Water Board waste discharge permit requirements, including systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal;
- j. Stationary and mobile equipment that are integral to the treatment, collection, or sludge handling processes, including, but not limited to, front loaders for sludge drying beds, injection/spray irrigation equipment for dedicated land disposal sites, vector trucks, and compost windrow turners. Dedicated equipment must be confined to the treatment, collection, or sludge handling systems for which it was purchased;
- k. Costs for planning, design, construction management, value engineering, and administration;
- l. Costs to prepare an Environmental Management System or Asset Management System not previously financed through CWSRF planning/design financing;
- m. Equipment necessary to maintain the eligible treatment facilities, including the manufacturer's list of spare parts;
- n. Necessary insurance related to the construction contract;
- o. Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system. Purchase of capacity is not considered refinancing;
- p. Recycled water systems (not including gray water systems);
 - i. Recycled water treatment works;
 - ii. Recycled water storage facilities;
 - iii. Recycled water pumping facilities;
 - iv. Recycled water groundwater recharge facilities;
 - v. Recycled water distribution systems;
 - vi. Recycled water onsite user retrofits on publicly owned use sites; and
 - vii. Recycled water capacity purchases (buy in costs).
- q. Water conservation measures:
 - i. Installation of water supply meters;

- ii. Plumbing fixture retrofits or replacements;
- iii. Use of efficient landscape irrigation equipment; and
- iv. Public water conservation education programs.

2. Ineligible Costs

- a. New collection systems not serving existing homes and businesses unless the new collection system serves an infill project within an existing service area.
- b. All land, easements, and rights of way, not used for sludge disposal or not an integral part of the treatment process;
- c. Honoraria;
- d. Private laterals for collection systems beyond the public right-of-way and any in-building facilities;
- e. Engineering costs included as part of the construction bid for other than design-build projects;
- f. Decorative items (art work, sculptures, reflective ponds, fountains, etc.);
- g. Non-wastewater solids handling facilities that perform pasteurization, co-generation, conditioning, heat drying, thermal reduction, and facilities for packaging or distributing biosolids;
- h. Operation and maintenance costs and 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 generated or consumed by the treatment plant;
- j. All other items not included in the construction contract except allowances; and
- k. Replacement of facilities previously funded by Clean Water grants or CWSRF financing except under one of the following circumstances:
 - i. Where upgrading treatment systems or technology is necessary to achieve the Regional Water Board-mandated level of treatment and the replacement of previously funded facilities is necessary to achieve the mandated enhanced level of treatment;
 - ii. Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable or cost effective operation of the facility; or

iii. Where a proposed water recycling project:

- A. Meets the definition of an eligible water recycling project pursuant to current WRF Guidelines per Appendix D;
- B. Uses recycled water to replace a bona fide current or proposed beneficial consumptive use of fresh water; and
- C. Necessitates the replacement of previously funded facilities to install the recycling project.

D. Funding Limitations

1. Capacity

- a. The Division will determine eligible capacity of POTWs using average dry weather flow and appropriate peak flows in accordance with population and per capita flow estimates provided by the applicant. The applicant will be responsible for documenting, in the Project Report, the average dry weather flow and peaking factors used for the project. Project capacity must be consistent with environmental constraints.
- b. The Division will calculate eligible capacity by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the Division will base the per capita flow on the existing population and the measured flow. This flow will be deemed to include the entire eligible project flows (residential, commercial, existing federal facilities, existing industrial, and infiltration/inflow). The Division will determine eligible capacity prior to the funding approval.
- c. Eligible design capacity for POTWs may be based on flow projections up to a period of twenty (20) years from the initiation of operation. For projects designed to serve a capacity greater than 20 years after initiation of operation, the Division will determine eligible and ineligible costs on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.
- d. Eligible design capacity for collection systems, interceptors, and outfalls may be based on flow projections up to forty (40) years from the initiation of operation. The Division will allocate between eligible and ineligible costs for capacity needs more than forty years after initiation of operation on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.

2. Population or Flow Projections

The applicant must submit population projections from an independent source (i.e., Regional Council of Governments, appropriate local planning agencies, Department of Finance, or Area-wide Water Quality Management Plans

prepared pursuant to section 208 of the CWA). The Division will use population or flow projections to determine the eligible project capacity. The Division may require additional documentation to support the projection's reasonableness. The applicant must include a detailed discussion of the local projections in the Project Report.

3. Industrial and Federal Facilities

Eligible capacity may include flows from existing industrial and federal facilities discharging to the municipal system.

X. EXPANDED USE CONSTRUCTION/IMPLEMENTATION FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix G contains the application for construction/implementation financing.

A. General

1. The application is organized into four packages: 1) general information, 2) technical, 3) environmental, and 4) financial security. The Division will accept partial packages and applications, but will process complete applications prior to incomplete applications consistent with section IV(A)(5) of this Policy. Applicants should submit the complete application well in advance of beginning to construct or implement the project.
2. To expedite financing, the Division will assist applicants with specific program requirements during the application review. The Division may also offer limited assistance to applicants to bolster their administrative and managerial capacity.

B. Application Requirements

All applicants must meet the application requirements of section IX(B) above. The Executive Director, Deputy Director, or designee may waive a requirement of section IX(B) for an expanded use project as appropriate unless otherwise required by federal or state statute, regulations, guidance, or agreements.

C. Eligibility

To the extent consistent with federal and state authority, the following expenses are generally eligible or ineligible for CWSRF funding for Expanded Use projects:

1. Eligible Project Costs

- a. Construction of facilities to treat, reduce, or prevent NPS or point source pollution not regulated by an National Pollution Discharge Elimination

System permit,² including reimbursement of planning, design, environmental documents, project administration, and construction management for facilities construction;

- b. Costs necessary to implement nonstructural components of water quality control projects;
- c. Purchase of land or interests in land necessary for the project or for the purposes of protecting or preserving beneficial uses, including necessary mitigation measures and project implementation;
- d. Demonstration projects;
- e. Education and outreach programs; and
- f. Project performance monitoring.

2. Ineligible Project Costs

- a. Operation and maintenance costs, extended warranties for equipment, acts of God, flood or earthquake insurance costs;
- b. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the project;
- c. Expenses associated with any project that is not an eligible CWSRF Expanded Use project type; and
- d. General overhead.

XI. **CONSTRUCTION/IMPLEMENTATION FINANCING AGREEMENT**

A. Financing Approval

- 1. The applicant 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 projects on the Project List, the Executive Director, Deputy Director of the Division, or designee is authorized to approve financing.
 - b. Non-routine or controversial projects will be considered by the State Water Board at a State Water Board meeting.

B. Execution of the Financing Agreement

² Storm water projects are eligible for funding under section IX of this Policy if they have a National Pollutant Discharge Elimination System permit and are publicly owned.

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 an approved application. Disbursement of funds is contingent on execution of a financing agreement, and 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 expeditiously in conformance with applicable requirements. The Deputy Director or designee may waive or amend a financing agreement expiration date for good cause. If a recipient misses an expiration date, and does not receive such an extension, it may need to reapply for CWSRF funding.

2. Allowances (Soft Costs)

The soft cost amounts in the financing agreement will be based on the amount requested by the applicant.

3. Effective Date

The effective date of the financing is the date used to determine the interest rate in section IV(C)(1) of this Policy. Construction costs incurred prior to the effective date are not eligible for CWSRF financing.

4. Compliance with Federal and State Statutes and Authorities

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.

5. Disadvantaged Business Enterprise (DBE)

- a. The DBE Program is a federal program designed to increase the participation of DBEs. The recipient must insert the DBE forms provided in Appendix J into the specifications. The State Water Board strongly encourages a pre-bid conference with the prospective bidders to explain the DBE requirement.
- b. The recipient must submit all completed DBE forms from the selected contractor with the final budget approval package per section XI(C)(2) below. If the recipient has not taken acceptable "Good Faith" efforts, the Division cannot accept the award of the construction contract. The recipient may select the next low, responsive and responsible bidder. Alternatively, it may rebid the contract. It must choose one of these options in order to receive CWSRF assistance. Consistent with the results of the Division's financial security review, the Division will amend the financing agreement to reflect the costs of selecting the next low,

responsive and responsible bidder or the low, responsive, and responsible bidder after rebidding the project.

- c. During construction, the recipient must report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. (See Appendix J.) The recipient must submit reports to the Division within ten (10) calendar days of the end of the semiannual reporting period (April 10 and October 10) until the “Notice of Completion” is issued.

6. Davis Bacon

All CWSRF construction financing or refinancing agreements will contain Davis-Bacon provisions (including appropriate wage determinations and required clauses in bids and contracts, verification of registration in approved U.S. Department of Labor Apprenticeship Programs, conducting wage rate interviews, collection/review of weekly payroll and compliance statements, posting applicable wage and whistle blower notices at construction sites), no matter when construction commenced or commences.

7. Force Account, Land Purchase and Other Non-Bid Projects

Force Account, Land Purchase and Other Non-Bid Projects that do not require public contracting or procurement to establish the final budget and scope of work in the financing agreement do not need to go through the process of executing an amended financing agreement per section XI(C) of this Policy.

C. Amended Financing Agreement

1. Final Budget Approval Package

The recipient must submit a final budget approval package. The primary focus of the review of the final budget approval package will be to determine consistency with the approved financing, the likelihood of meeting limits or objectives established by the Regional Water Board, and compliance with applicable CWSRF Program requirements, including federal cross-cutters.

- a. The recipient must submit the final budget approval package to the Division for review and approval prior to disbursement of construction or previously unidentified equipment or material costs. The Division will also review the package to ensure that both the recipient and its contractors or vendors have complied with the applicable requirements of this section, any conditions specified in the financing approval, and that all permits, approvals, and financing necessary to complete the project have been obtained. Applicants may start construction prior to the effective date of the financing agreement, but will not receive reimbursement of construction costs incurred prior to the effective date, and are not guaranteed financing approval and an executed financing agreement.

- b. Neither the USEPA 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 amended financing agreement will not be sent to the recipient until all bid and/or contract disputes have been resolved.
- c. The Division will use the bids, proposals, and purchase orders accepted by the recipient, along with the requested contingency amount to determine the eligible amended financing agreement consistent with the financing limit determined by section IX(B)(4)(a)(i) of this Policy. The recipient must certify that it complies with all applicable public contracting requirements.

2. Execution of Amendment

- a. After the Division reviews and approves the final budget approval package, it 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 identified in the final budget approval package.
- b. The Completion of Construction date will be revised in the amended financing agreement for the purpose of determining the recipient's final payment schedule. The final Completion of Construction date will be established by mutual agreement between the Division and the recipient.

D. Cost Increases

1. The applicant may include a contingency amount in its application, subject to Division approval. The Division's credit review will evaluate the contingency amount. If the credit review shows the applicant can afford repayment, the financing agreement will include the contingency amount. The recipient can use this contingency amount, plus any other funds remaining due to construction/implementation or allowance cost reductions, to pay for change orders approved by the Division. The recipient must cover change order cost until such costs are approved by the Division. The Division will disencumber any unused funds at the end of the project.
2. Where the financing agreement provides for 100 percent forgiveness of the principal or provides for a grant, the total amount of CWSRF principal forgiveness or grant assistance cannot exceed the limits established in the IUP or the amount made available by USEPA. The Division will evaluate cost increases for these projects on a case by case basis. The Division-approved contingency amount shall not exceed ten percent of the budgeted construction amount.
3. The State Water Board will not increase or add funds to the financing agreement after the final budget is approved and the amended finance agreement is executed. All project changes that result in costs that exceed the approved contingency amount will be the responsibility of the recipient.

XII. CONSTRUCTION/IMPLEMENTATION DISBURSEMENTS

All disbursements are subject to federal and state requirements and/or limitations notwithstanding any provisions of this Policy. A recipient may request disbursements at any time after execution or amendment of a financing agreement that identifies the specific costs. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements. The Division will not disburse funds for construction until the recipient adopts the rate increase subject to Proposition 218. (See California Constitution, article XIII C and XIII D; Gov. Code, § 53750 et seq.)

A. Disbursement Requests

1. The Division will send the recipient a copy of the Request for Disbursement form with the financing agreement. Appendix F contains specific instructions for requesting disbursements. The Division will send the recipient a copy of each processed disbursement request to show the total amount disbursed.
2. The recipient must ensure that adequate local funding is available to pay its contractors and vendors in case the disbursement is not processed before payment to the contractor or vendor is due.

B. Initial Financing Agreement Disbursements

1. Allowances

The Division may disburse eligible allowances (soft costs) that were incurred prior to the effective date of the financing agreement after execution of the financing agreement. Costs previously disbursed under a CWSRF planning/design financing agreement are not eligible for reimbursement. The recipient must certify that soft costs work has been completed and that claimed costs were incurred. The recipient must submit invoices or other acceptable documentation to substantiate disbursement of the soft costs.

2. Pre-purchase Material and Equipment

The Division may disburse eligible, identified pre-purchased material and equipment used in the project that was purchased in accordance with state law prior to the effective date of the financing agreement, after execution of the initial financing agreement. The Division will make disbursements for actual incurred pre-purchase material and equipment costs supported by documentation to substantiate disbursement of these costs. If the recipient incurs eligible equipment or material costs before the effective date, it does so at its own risk.

C. Amended Financing Agreement Disbursement

The Division may disburse all eligible costs after the agreement is amended to incorporate the actual bid or identified costs. (See Appendix F for instructions.)

1. The Division will disburse remaining soft costs paid during construction/implementation as costs are incurred. The Division will review and approve soft costs based on each applicant's project and documentation submitted supporting incurred soft costs.
2. The Division will base construction/implementation disbursement on the amount of money currently due and payable to the contractor or vendor for eligible construction/implementation, material, or equipment costs, plus soft costs incurred, minus any amounts previously disbursed by the Division.

D. Final Disbursement

1. Division staff and the recipient 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 XIV of this Policy.
2. As a courtesy, the Division will normally send a reminder notice approximately three months before the due date for the final disbursement request, but prompt submittal remains the responsibility of the recipient. If the Division has not received the complete final disbursement request and prior approval has not been granted to submit the final disbursement request at a later time, then the Division may deobligate the undisbursed balance of the CWSRF financing agreement.

XIII. CONSTRUCTION OR IMPLEMENTATION

A. Pre-Project Conference or Media Events

The recipient shall notify the Division of any pre-project conferences or press or public media events related to the project with sufficient advance notice to allow Division staff to attend, but in any event, with at least 10 days' notice.

B. Inspections: Interim and Final

1. The Division may conduct interim inspections during construction or implementation.
2. The Division will conduct a final project inspection. During the final project inspection, the Division and the recipient will establish a due date for submission of the Project Completion Report.

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 on 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.

XIV. PROJECT COMPLETION REPORT

- A. The recipient must notify the appropriate Regional Water Board and the Division that its project was completed by submitting a Project Completion Report to the Division with a copy to the Regional Water Board. The Project Completion Report must be submitted on or before the due date established per section XIII(B)(2). The Project Completion Report must describe the project, describe the water quality problem the project sought to address, discuss the project's likelihood of successfully addressing that water quality problem in the future, and summarize compliance with environmental conditions, if applicable.
- B. The State Water Board expects the recipient to prepare and send a timely and complete report. The State Water Board may avail itself of any legal means to obtain this report. (See Water Code §13267.)

XV. RECORD KEEPING REQUIREMENTS

The recipient must maintain separate project accounts in accordance with federal requirements as specified in the financing agreement. (See OMB Circular A-133.) In most cases, the records retention period will be thirty-six (36) years.

XVI. CONSTRUCTION/IMPLEMENTATION FINANCING PAYMENTS

- A. Interest and other charges, if applicable, will accrue on all disbursements as of the date of each disbursement. The Division will issue a revised payment schedule after the recipient submits an approvable final disbursement request.
- B. Other than for Extended Term Financing, financing agreements will be fully amortized no later than twenty (20) years after Completion of Construction. The amount to be paid will include the amount financed plus accrued interest,

administration service, and SCG funding charges, if applicable. Extended Term Financing will extend no longer than thirty (30) years after Completion of Construction and is subject to any conditions or restrictions set forth by USEPA. (See Appendix A.)

C. The Division will prepare a payment schedule that includes:

1. The interest rate, administration service charge, and SCG funding charge, if applicable;
2. Amount of CWSRF funding;
3. The final principal amount of the financing agreement including accrued interest, administration service charge, and SCG funding charge, if applicable; and
4. A complete amortization table.

D. The recipient must make its first annual payment one year following the Completion of Construction date, as established in the financing agreement.

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-day grace period, after which time the State Water Board will 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 CWSRF 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.

E. All payments are to be sent to:

CWSRF Accounting Office
State Water Resources Control Board
Attention: CWSRF Program
Post Office Box 1888
Sacramento, CA 95812-1888

XVII. BOARD RESERVATION OF AUTHORITY

- A. Prior to approving any financing, the State Water Board reserves the right to modify this CWSRF Policy as necessary to provide for effective and equitable use of CWSRF funds, including:
1. Reducing the eligible funding amount for any project for due 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 CWSRF revenue bonds.
- B. The Deputy Director of the Division may update and amend the CWSRF Policy Appendices and create new Appendices, unless doing so would require additional approval by USEPA or the Executive Director, as necessary for administrative or procedural changes not in conflict with this Policy.

XVIII. DISPUTES

- A. 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.
- B. An applicant or recipient may appeal a staff decision within 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 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.
- C. Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.

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