

Exhibit B
STATE
WATER
RESOURCES
CONTROL
BOARD



CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY



Policy for Implementing The Clean Water State Revolving Fund For Construction of Wastewater Treatment Facilities



Amended
September
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POLICY FOR IMPLEMENTING
THE CLEAN WATER STATE REVOLVING FUND FOR
CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

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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 and water recycling facilities, implementation of programs to control pollution from nonpoint sources and stormwater drainage, and development and implementation of estuary cleanup programs. This Policy covers CWSRF assistance for the construction of wastewater treatment and water recycling facilities.

This Policy is organized in sequential Project development order. Sections I through VII discuss general requirements, including the Statewide Project Priority List (Statewide List) system, Refinancing, Water Recycling Projects, and Match, Section ~~IXVIII~~ discusses Planning Financingfacilities-planning, and Section IX discusses Construction Financingdesign review and Project Performance Standards. Sections XI through ~~XIV~~ discuss the Construction Financing Agreement, the Approval of Awardspecifics, and Disbursements. Sections ~~XVII~~ and ~~XIV~~ discuss Construction and Operation, respectively, and Sections ~~XVIII~~ through ~~XVIII~~ discuss rRecord kKeeping, pPayments, State Water Board Reservation of Authority, and Eligibility resolution-of-dDisputes.

I. INTRODUCTION

The Federal CWA provides for the creation of a CWSRF Program capitalized in part by federal funds. The Federal CWA authorizes financial assistance through loans and other financing mechanisms for construction of wastewater treatment and water recycling facilities, for implementation of nonpoint source and storm drainage pollution control management programs, and for the development and implementation of estuary conservation and management programs. The Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities (CWSRF Policy) only addresses the issuance of financial assistance for wastewater treatment and water recycling facilities. The priority system, however, covers all eligible CWSRF activities. The CWSRF is intended to provide financial assistance in perpetuity using State of California (State) and federal funds.

This is the ~~ninth~~^{eleventh} amendment to the CWSRF Policy originally adopted by the State Water Resources Control Board (State Water Board) on August 18, 1988. The requirements contained in this amended CWSRF Policy apply ~~to all Projects receiving Facilities Plan Approval from the Division of Financial Assistance (Division)~~ after ~~September 16, 2008~~^{March 17, 2009}. A flow chart of the overall program process is provided in Appendix A. A list of contacts in the Division is provided in Appendix B. Appendices C through ~~QR~~ contain additional Division guidance material on the CWSRF Program.

II. PURPOSE AND OBJECTIVE

The primary purpose of the CWSRF Program is to implement the CWA and various State laws including the Clean Water Bond Law of 1984~~;~~[;] the Safe, Clean, Reliable Water Supply Act (1996 Bond Law)~~;~~[;] the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (2000 Bond Law)~~;~~[;] ~~the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006~~^{Resource Protection/Park Bonds} (Proposition 84), and any subsequent bond laws, by assisting in the financing of wastewater treatment facilities necessary to prevent water pollution, recycle water, correct nonpoint source and storm drainage pollution problems, and provide for estuary enhancement, and thereby protect and promote the health, safety, and welfare of the inhabitants of the State.

The State Water Board is also interested in reducing the effects of climate change and promoting sustainable water resources for future generations. The provisions of this Policy are designed to support these secondary objectives where economically and technically feasible. These secondary objectives must be cost effective and essential to proposed facilities that primarily support the purposes of the State Water Board.

III. DEFINITIONS

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

- (a) “Allowance” or “soft costs” means an amount of money ~~based on a percentage of the accepted bid~~ for an eligible Project ~~to help defray the~~ planning, design, value engineering, and construction engineering management and administration costs of the Project.
- (b) “Applicant” means a city, town, district, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and approved management agency under Section 208 of the Federal CWA applying for CWSRF funding.
- (c) “Areawide Waste Treatment Management Plan” means a plan prepared in conformance with Section 208 of the Federal CWA.
- (d) “Capitalization Grant” means funds granted to the CWSRF Program in accordance with federal rules or laws.
- (ed) “Completion of Construction” means the date that the work of building and erection of the Project is substantially complete as certified by the applicant.
- (fe) Design-Build
 - (1) “Best Value”, also known as “greatest value”, means any selection process in which proposals contain both process and qualitative components, and award is based upon a combination of price and qualitative considerations.
 - (2) “Design-Build” means the system of contracting under which one entity performs both architectural design/engineering and construction under a single contract with the owner. Also known as “design-construct” or “single responsibility” or “Turn Key.”
 - (3) “Design-builder” means the entity contractually responsible for delivering the Project design and construction.
 - (4) “Design-Build Bid Proposal” means a document submitted by pre-qualified Design-builders in response to the Request for Design-Build Proposal and which contains cost, design factors and usually, function, layout, materials, aesthetics, construction techniques, and specifications.
 - (5) “Honorarium” means a stated amount sometimes paid to unsuccessful Design-builders in consideration for preparing a Design-Build bid proposal in response to the owner’s Request for Design-Build Proposal.

- (6) “Request For Design-Build Qualifications” means the document issued by the owner prior to a Request for Design-Build Proposal to determine whether a firm is fundamentally qualified to compete for a certain project or class of projects.
- (7) “Request For Design-Build Proposal” means the document issued by the owner to solicit design and construction services proposals from the pre-qualified Design-builders and that contains the project objectives, project design criteria, site information, contract requirements, selection procedure and proposal (submittal) requirements.
- (gf) “Disadvantaged ~~e~~C~~o~~m~~m~~u~~n~~i~~t~~y” (DAC) means a community with a population of less than 20,000, and either: (1) a statewide 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.
- (hg) “Division” means the Division of Financial Assistance within the State Water Board, or any other Division of the State Water Board authorized to administer the CWSRF Program.
- (ih) “Eligible Project Cost” means that portion of the total cost of a Project that is eligible for financial assistance from the Clean Water State Revolving Fund pursuant to federal and State laws, rules, regulations, policies and guidelines.
- (ii) “Environmental Documents” means either an Initial study and Negative Declaration or an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act (CEQA) and associated documents that show compliance with federal environmental laws.
- (ij) “Estuary Enhancement Project” means a Project that implements a Comprehensive Conservation Management Plan established in accordance with ~~s~~Section 320 of the CWA.
- (lk) “Excessive Infiltration/inflow” means a flow rate in excess of acceptable threshold values as defined by Section IX.A.5~~r~~ of this document.
- (km) “Extended Term Financing” 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 United States Environmental Protection Agency (USEPA) (see Appendix G).
- (n) “Executive Director” means the Executive Director of the State Water Resources Control Board.
- (ol) “Facilities Plan Approval (FPA)” means approval by the Division of the Project concept being proposed by the applicant.
- (pm) “Federal Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C.A. 1251 et seq.); including any amendments thereto.

- (~~gn~~) “Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the applicant, in which the terms, provisions, and conditions governing the CWSRF financing are stated.
- (~~re~~) “House Lateral” means the sewer pipe from the public right-of-way to the residential, commercial, institutional, or industrial structure.
- (~~ps~~) “Housing Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.
- (~~te~~) “Infiltration” means the water entering a sewer system including that from service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.
- (~~uf~~) “Infiltration/Inflow” means the total quantity of water from both infiltration and inflow without distinguishing the source.
- (~~vs~~) “Infiltration/Inflow Analysis” means a study to demonstrate the nonexistence, or possible existence, of excessive Infiltration/Inflow in each sewer system tributary to the treatment works.
- (~~wf~~) “Inflow” means the water discharged into a sewer system including that from service connections, such as, but not limited to, 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, or drainage. It does not include, and is distinguished from, infiltration.
- (~~xu~~) “Initiation of Construction” means the date that the Notice to Proceed with the work is issued for the Project, or if the notice is not required, the date of commencement of building and erection of the Project.
- (~~yv~~) “Intended Use Plan (IUP)” is the annual document that outlines the State Water Board’s business plan for the CWSRF Program for the State Fiscal Year (SFY). In particular it identifies the projects that the State Water Board expects to fund during the SFY.
- (~~zv~~) “Land Use Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.
- (~~aaw~~) “Nonpoint Source Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture.

- (~~abx~~) “Preliminary Funding Commitment” means ~~an a formal~~ action by the State Water Board or one of its designees approving and reserving funds for ~~athe~~ Project.
- (~~acy~~) “Project” means any distinguishable segment, or segments, of a wastewater treatment facility described in the approved facilities plan, which can be bid separately, and for which financial assistance is being requested or provided.
- (~~adz~~) “Project Completion” and “Initiation of Operation” mean the date that operation of the treatment facility is initiated, or is capable of being initiated, whichever comes first as certified by the applicant.
- (~~aea~~) “Recipient” means an applicant with an executed financing agreement signed by all parties.
- (~~afb~~) “Refinancing” means the use of CWSRF monies to refinance local external borrowings (borrowings from outside the local agency for eligible Projects).
- (~~age~~) “Regional Water Board” means the appropriate California Regional Water Quality Control Board.
- (~~ahd~~) “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/Inflow.
- (~~aje~~) “State Water Board” means the California State Water Resources Control Board.
- (~~aif~~) “Storm Drainage Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing 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 ground waters of the State.
- (~~akg~~) “Sustainability” means balancing economic, environmental, and social factors in an equitable manner to maintain and protect the water resources needs of the present generation without compromising the ability of future generations to meet their own water resources needs.
- (~~alh~~) “Treatment Facilities” ~~or “Treatment Works”~~ means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement ~~Section 201 of the F~~ederal 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.

In addition, “treatment facilities” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

- (am~~i~~) “Useful Life” means the period of time over which the funded facilities will serve their intended purpose in a cost-effective manner from the estimated Project Initiation of Operation date.
- (an~~j~~) “Water Quality Assessment” means a report prepared by the State Water Board to identify the water quality conditions in the waters of the State.
- (aok) “Water Quality Control Plan” means a State Water Board approved plan adopted pursuant to Division 7 of the Water Code designating or establishing beneficial uses and water quality objectives for water within a specified area and a program of implementation needed to achieve these objectives.

IV. **PRIORITY SYSTEM AND INTENDED USE PLAN**

The primary purpose of this section is to implement a Priority System and Intended Use Plan for providing CWSRF funding assistance for the planning, design, and construction of wastewater treatment, nonpoint source, storm drainage, water recycling, and estuary enhancement Projects and programs eligible under Title VI of the CWA.

A. Development of Regional Water Board Recommendations

1. Annually, each Regional Water Board Executive Officer shall be consulted regarding develop recommendations for the Projects in the Region ~~that should be on~~for the Statewide Project Priority List (Statewide List).
2. ~~The Executive Officers’ recommendations~~ Results of these consultations shall be transmitted to the Division each year by the scheduled date set by the Division. The Division shall not place a Project on the Statewide List unless the Regional Water Board Executive Officer concurs.

B. Development of Statewide Project Priority List

Annually, after review of the Executive Officers’ recommendations, the State Water Board shall adopt a Statewide List. The Statewide List shall identify those Projects for which assistance from the CWSRF Program is expected during the succeeding five-year planning period.

1. The Statewide List shall be adopted by the State Water Board by June 30 of each year.

2. The fundable portion (first year) of the Statewide List shall include all Projects, which have received a preliminary funding commitment and are scheduled for a financing agreement during the first year of the five-year planning period. Projects receiving a preliminary funding commitment during the fiscal year shall be automatically moved to the fundable portion (first year) of the Statewide List provided the Project is scheduled to receive a financing agreement in the current fiscal year. The extended portion of the Statewide List shall include those Projects without a preliminary funding commitment and those scheduled for a financing agreement during the following four years. Placement on the extended portion of the Statewide List will be based on Project schedules.
3. Placement of a Project on the Statewide List shall not constitute a commitment to provide financial assistance.

C. Priority Classes

Each Project shall be assigned to one of the following priority classes:

1. Class A -- Public Health Problems.
 - a) Publicly Owned Wastewater Treatment Facilities 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 Regional Water Board has (1) adopted a prohibition for elimination of discharges from individual treatment systems and such prohibition has been approved by the State Water Board, or (2) approved a local moratorium prohibiting the construction of new individual systems (See Appendix C), or (3) adopted a cease and desist order; or
 - b) nonpoint source, storm 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 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.
2. Class 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 an impaired water body are not being attained.
3. Class C -- Compliance With Requirements or Water Recycling Projects.
 - 1) Projects necessary to comply with Waste Discharge Requirements (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 2) Projects that provide for treatment and delivery of municipal wastewater

or groundwater contaminated due to human activity, for uses that will offset State and Local Water Supplies or Projects that are necessary to meet state policy regarding recycled water.

4. Class D -- Projects Serving as Preventative Measures Against Additional Water Quality Degradation for Impaired or Unimpaired Water Bodies.

Projects which would control discharges to impaired or unimpaired waters, where correction of such discharges may, or may not, be required through formally adopted waste discharge requirements. ~~This Class~~ includes Projects to provide additional wastewater treatment capacity.

5. Class E -- Other Projects.

Projects not included in any of the other priority classes.

D. Project Ranking

The State Water Board will determine which classes are fundable. Projects within fundable Priority Classes shall be funded based on readiness to proceed.

E. Restrictions and Adjustments

1. If a Project falls in more than one priority class, the full Project shall be placed in the highest priority class applicable to the more costly segment of the Project, except as specifically ordered by the State Water Board.
2. If the priority classification of a Project is in any way dependent upon State, County, or local action, or upon State Water Board or Regional Water Board action, only action taken prior to the adoption or amendment to the Statewide List will be considered.
3. The Statewide List may be adjusted or amended by the State Water Board ~~or the Executive Director~~ for good cause, ~~subject to approval by the United States Environmental Protection Agency (USEPA).~~
4. The State Water Board reserves the right to transfer Projects from one priority class to another priority class, to reduce the eligible cost of any Project, and to allocate available funds among one or more priority classes when the State Water Board determines such action to be necessary or appropriate for effective and equitable use of available monies. Such action will only be taken after ~~a public hearing notice and opportunity for public comment.~~
5. When appropriate, the State Water Board may create a set-aside for the purposes of assuring that CWSRF assistance will be available for select types of Projects and programs contained on the fundable portion of the Statewide List.

F. Funding of Projects

Projects on the fundable portion of the Statewide List will receive financing agreements and will be executed by the State Water Board, except as may be directed by the State Water Board, on an as ready to proceed with construction basis. If insufficient funds are available for all projects seeking funding, then the Division shall first fund projects based on the Priority Classes established above, giving priority within the Class to the disadvantaged community with the lowest median household income. If the above factors are comparable, the project that most effectively addresses global climate change shall be funded first.

G. Project Additions, Removals and Changes

The Division shall monitor progress of Projects on the Statewide List to assure that applicants are proceeding expeditiously with their Projects. If applicants do not proceed with project construction or request that a Project remain on the Statewide List within five years of initial placement on the list, the ~~p~~Project will be removed from the list.

The Division may add a Project to the fundable portion of the Statewide List, provided the Project has received a preliminary funding commitment and will receive a CWSRF financing agreement within the fundable year. The Division may remove a Project from the fundable portion of the Statewide List if the applicant is no longer projected to receive a financing agreement in the fundable year.

Projects shall not be removed from the Statewide List unless:

1. The State Water Board so instructs;
2. The Project has received CWSRF financing or is otherwise completed;
3. The Regional Water Board so requests and the State Water Board or the Executive Director concurs;
4. The applicant so requests and the State Water Board or the Executive Director concurs; or
5. The Project has been listed on the Statewide List for at least five years and the Agency has not submitted an application or requested that the Project remain on the Statewide List.

H. Intended Use Plan and Capitalization Grant Applications

1. Annually the Division shall prepare an Intended Use Plan in accordance with federal rules. The Intended Use Plan shall be adopted by the State Water Board by June 30 of each year. The Executive Director may amend the Intended Use Plan for good cause.

2. The Executive Director may apply for and accept Capitalization Grants and approve any amendments to the Capitalization Grants.

V. MATCH

The CWA requires the states to provide a match equal to 20 percent of the federal Capitalization Grant in order to receive federal monies. Applicants may contribute match and receive match financing. The State Water Board may offer match financing to meet CWA requirements. The State Water Board will determine whether to offer match financing at least one time per year, normally in the CWSRF Program IUP.

The following requirements, in addition to all other requirements in this CWSRF Policy, apply to new CWSRF financing agreements where the applicants are providing match:

A. Resolution

1. An applicant electing to participate in the program must submit to the Division an acceptable resolution passed by the local governing body. A model resolution is included in Appendix NQ.
2. The resolution must state the applicant's intent to provide the match in the amount and at the times necessary to complete the Project.
3. The resolution must include a commitment to provide the match for administrative services of 0.575 percent of the total eligible Project costs to cover the cost of obtaining the administrative match. The fee will be waived if sufficient funds are available to make the administrative match from other sources.

B. Terms

The interest rate on match financing agreements shall be zero (0) percent. The payment period is 20 years. 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 financing agreements cannot use match financing.

C. Disbursements

1. Allowances (soft costs) for Architect/Engineer (A/E) and Administration Costs

Recipients are required to certify ~~with the planning and design allowance disbursement requests~~ that at least the match portion (16.67 percent) of the incurred allowance costs have been paid. The Division will then disburse the remainder of the allowance requested (83.33 percent).

2. Construction or Equipment Procurement Costs and Construction Allowance

Recipients are required to pay the match for each construction contractor(s) or vendor's invoice (16.67 percent of each invoice).

As an alternative, recipients may pay the contractor(s) or vendor(s) the full eligible amount of the contractor's' or vendors' invoices until they have 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 to the contractor(s) or vendor(s), recipients may request the remainder of the financed amount (83.33 percent of the financed amount) from the CWSRF.

3. Assurances

Certification of payments to the contractor(s) or vendor(s) must be submitted to the Disbursements Unit. 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 funds disbursed from the CWSRF and the match amounts to the contractors or vendors.

~~VI. RETROACTIVE FUNDING~~

~~No funds will be disbursed until after a financing agreement has been fully executed. However, Projects may receive funding for eligible Project construction costs incurred after the Division has approved Final Plans and Specifications (FP&S) or the Request for Proposal. Portions of the Project constructed prior to FP&S approval are not eligible for CWSRF funding, except for allowances.~~

VII. REFINANCING

A. Existing Disadvantaged Community (DAC) Debt

~~Disadvantaged communities~~ A DAC may use CWSRF funds to refinance local debt that was incurred for existing facilities that fall within any of the five CWSRF priority classes identified in this Policy. Existing debts may be refinanced with CWSRF funds if the Division determines:

1. That the community is a Disadvantaged Community DAC;
2. The local debt was incurred for existing facilities that fall within any of the five CWSRF Priority classes in the CWSRF Policy; and
3. That refinancing the debt is necessary to complete a new Project in any of the five CWSRF Priority classes at a payment that is affordable for the community.

B. Bridge Financing

Any recipient, not just ~~disadvantaged communities~~DACs, that has relied on short-term or bridge financing ~~to cover the gap between the time of FP&S approval and execution of a financing agreement~~ may use CWSRF funds to pay off such short-term debt provided funds are available to the Division for this purpose. ~~As stated above in Section VI, only eligible Project costs incurred after FP&S approval may receive CWSRF funding.~~

VIII. WATER RECYCLING PROJECTS

A. Applicable Policies

Water recycling Projects generally serve one of two purposes: (1) meeting pollution control needs as specified in waste discharge requirements or (2) meeting water supply needs. Water recycling Projects that meet pollution control needs are funded in accordance with the CWSRF Policy, and Projects meeting water supply needs are funded in accordance with the Water Recycling Funding Program (WRFP) Guidelines.

Water recycling Projects are placed in Priority Class C as Projects that provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses that will offset State and Local Water Supplies, or Projects that are necessary to meet state policy regarding recycled water.

B. Multiple-Purpose Projects

A water-recycling Project may be a multiple-purpose Project, serving both water pollution control needs and water supply needs. However, the facilities associated with each purpose must be evaluated and the eligibility of facilities determined in accordance with the applicable provisions of either the CWSRF Policy or the WRFP Guidelines.

There are two types of multiple-purpose water recycling Projects:

1. Water recycling facilities for water supply purposes may be proposed to be constructed simultaneously with wastewater treatment and disposal facilities that could meet discharge requirements without the water recycling facilities. The WRFP Guidelines would be applied to the water recycling facilities component of the Project.
2. In other cases, water recycling may be an inseparable part of the facilities needed to meet discharge requirements but may be justifiable only by considering both the pollution control and the water supply benefits. In this case, appropriate provisions of the CWSRF Policy and the WRFP Guidelines will be applied.

VIII. APPROVAL OF PLANNING FINANCING

A. Application Requirements

To obtain a planning financing agreement, an applicant must submit to the Division: 1) a Plan of Study; 2) legal documents; and 3) financial documents.

1. The Plan of Study must include the following elements:

i. Scope of Planning Work

- ii. Planning Budget
- iii. Planning Schedule (including deliverables and submittal dates)

If the applicant intends to refinance the planning financing principal as part of a construction financing agreement (which may include soft costs for design, administration, etc., per Section X.B) with the CWSRF (see Section VIII.C.2), then the Plan of Study shall include development of all planning documents necessary for construction financing approval (see Section IX).

2. The following legal documents must be submitted to the Division:

- i. Legal Authority: The applicant shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant's legal counsel for follow up questions from State Water Board legal counsel.
- ii. Agency Resolutions: Agency Resolutions are required authorizing the application, the financing amount (at the option of the applicant), and designating an Authorized Representative (a named individual or position title at the option of the applicant) to sign the agreement and make other certifications.
- iii. Joint Powers Agreement: The applicant shall provide a copy of any Joint Powers Agreement for the proposed Project with a summary explanation of the shared financial and management responsibilities of each Agency.

3. The Division will perform a credit/legal review to determine the applicant's creditworthiness and recommend a maximum funding amount based on this review. The following is a description of the credit review process, and the related documents an applicant must submit to the Division for planning financing:

a. Credit Review Process

- Applicant submits the information noted below.
- The Division will determine the applicant's credit worthiness based on actual/projected revenues.
- The Division will establish a credit limit for the applicant.
- If the applicant's financing cost exceeds the credit limit at any time, the Division staff will work with the applicant to find a way to finance the planning, if feasible.

All Applicants shall comply with the Credit Review requirements. For all applicants, no bond, loan, or debt defaults may exist as of the date the planning financing agreement is executed. Prior defaults may be grounds for disapproval, depending on the circumstances.

b. Credit Review Documents

1. Dedicated Source(s) of Funds

§ 603(d)(1)(C) of the Federal CWA requires each financing recipient to establish one or more dedicated sources of revenue for payment of the financing agreement. A dedicated source can be general taxes, user fees, a special assessment, or other acceptable sources.

Revenue will be considered dedicated when the Agency passes an ordinance or resolution committing a source of funds for payments. The ordinance or resolution dedicating a source of revenue for payment of the CWSRF financing agreement must be adopted by the Agency's governing board before approval of the financing.

Ordinance or resolution language equivalent to the following example is acceptable:

The (Agency) hereby dedicates the following source of revenue (user charge proceeds or revenue bonds, etc.) to pay any and all Clean Water State Revolving Fund financial agreement(s) on Planning Project No. C-06- xxxx-xxx. This dedicated source of revenue shall remain in effect until such financing agreement is fully discharged unless the State Water Resource Control Board approves modification or change of such dedication in writing.

2. Financial Statements and Security

- a. The applicant shall provide three years of financial statements. The financial statements must include current year (if available), and two years prior. Audited financial statements are preferred.
- b. The applicant shall identify other sources of security if needed for a financing agreement, such as assessments, stocks, surety bonds from an insurance company, or property. If using property, provide an estimate of the value and how the value was determined. Identify whether the security is pledged as security for any other debt obligation.

3. Litigation or Adverse Findings

The applicant shall describe any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside reviewers 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 planning financed by the CWSRF Program.

4. Existing Indebtedness

- a. For the purposes of the following, "existing debt" means the applicant's existing debt that relies on the same pledged revenue

source as the applicant is pledging for payment of the CWSRF financing.

- b. The applicant shall submit a schedule of existing debt. This schedule will be an exhibit to the CWSRF planning financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). The schedule will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.
- c. The applicant shall submit a letter from the Agency's bond counsel (in certain circumstances local counsel will be adequate) that:
 - 1. Cites the relevant provisions in each of the applicant's existing debt documents listed in the schedule (other than CWSRF debt) that affect its ability to enter into and repay the requested financing.
 - 2. Provides counsel's opinion about whether those conditions have been met, and
 - 3. Provides counsel's opinion about whether those documents preclude the applicant's ability to agree to the CWSRF financing agreement.

The Division's legal counsel may waive this requirement. If the applicant has no other debt (except other CWSRF debt), the Agency's Authorized Representative must provide a letter stating this.

- d. For all existing debt (other than CWSRF debt), the applicant shall submit the relevant debt document (loan agreement, bond indenture, etc.) by digital or paper copy. The applicant may be required to submit supplemental materials (Offering Statement, maturity schedules, etc.), particularly in the case of multiple series indentures or large debt loads.

B. Eligibility

- 1. Eligible costs include the preparation of wastewater-related planning documents, including, but not limited to:
 - a. Feasibility Studies/Project Reports
 - b. Financial Analyses
 - c. Environmental Impact Analyses
 - d. Capital Improvement Plans
 - e. Water Conservation Plans
 - f. Sewer System Evaluation Surveys
 - g. Environmental Management Systems
 - h. Asset Management Systems

2. Ineligible Costs

Applicants are required to complete the planning process prior to approval of construction funding. Design, value engineering, construction management, and administration costs associated with the design and construction phases will be included in the construction financing agreement, and are not eligible for reimbursement under the planning financing agreement.

C. Planning Financing Terms

1. Draw Period: The draw period shall be up to three years. The Deputy Director of the Division or designee may approve up to a 180 day extension of an established draw period for good cause.
2. Refinancing: At the end of the draw period, the planning agreement will be amortized per Section VIII.C.4 unless the applicant refinances the principal as part of a construction financing agreement with the CWSRF. The construction financing agreement must be executed prior to the end of the draw period. The short term financing cannot be refinanced after the end of the draw period, unless approved by the State Water Board. Interest will begin to accrue on the planning agreement balance beginning the effective date of the construction financing agreement per the terms of the construction financing agreement.
3. 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 financing agreement, then interest will be applied at the rate of half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the effective date the planning agreement (rounded up to the nearest 0.1 percent), and continue to accrue at that rate until the agreement is fully amortized.

Amortization Period: Planning will be amortized by equal annual payments over five years unless refinanced to construction financing per Section VIII.C.2.

4. Future Local Debt: The applicant's future debt may not be senior to CWSRF debt. The applicant's future local debt may be on parity with the CWSRF debt if the conditions described in Section X.G are met.

D. Planning Financing Approval and Agreement

It is not necessary for an applicant or a project to be listed on the Statewide List to receive a planning financing agreement. For routine, noncontroversial Projects, the Deputy Director of the Division or designee is authorized to approve and execute Planning Financing Agreements.

Upon review and approval of required documents, the Division will prepare a Planning Financing Agreement. No funds will be disbursed until after the Planning Financing Agreement is executed. Eligible costs may be disbursed after the planning financing agreement is executed.

E. Planning Disbursements

Requests for Disbursement may be submitted at any time after execution of the planning financing agreement. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements.

Specific instructions for requesting disbursements are also included in Appendix M.

A draft deliverable(s) must be submitted prior to disbursement beyond 70 percent of the financing amount, and a final deliverable(s) must be submitted for approval by the Division prior to disbursement beyond 90 percent of the financing amount. If the applicant intends to refinance the planning financing principal as part of a construction financing agreement with the CWSRF, the Preliminary Funding Commitment shall act as Division approval of the final deliverable(s). For short term financings for the preparation of planning documents not directly resulting in a construction project, the Division will issue a Planning Document(s) Approval Letter.

The final disbursement request must be received by the Division 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 final disbursement request is not received prior to the end of the draw period, and extension of the draw period has not been granted, the undisbursed balance of the CWSRF financing agreement will be deobligated and made available for other projects.

F. Planning Payments

The first annual payment will be due one year following the end of the draw period. The final annual payment will be due five years following the end of the draw period. The Division will issue a revised payment schedule after the recipient submits an approvable final disbursement request. All payments are to be sent to the address referenced in Section XVI.

The recipient will have a ten-day grace period, after which time a penalty may be assessed for late payment. Such penalty may include, but is not limited to, lost interest earnings, staff time, bond debt service default penalties, and other costs incurred. Any such penalties collected will be deposited in the CWSRF account. Penalties assessed will not change the principal balance of the financing agreement. Such penalties will be treated as a separate receivable in addition to the annual payment due.

G. Record Keeping Requirements

Record keeping requirements are described in Section XV.

IX. FACILITIES PLANNING APPROVAL OF CONSTRUCTION FINANCING

An applicants must submit all planning and financial documents, unless otherwise authorized, to obtain funding a construction financing agreement for their its projects. The documents include a Project Report, complete Environmental Documents, Water Conservation requirement compliance documents, general planning documents, and credit analysis documents, and other documents shown in Section IX.F. Partial applications will be accepted, but complete applications will be processed prior to incomplete applications. While early submittal is not a program requirement, it is recommended that applicants submit the application for review in advance of the ten percent (10%) design level effort.

To expedite a preliminary funding commitment financing agreement, the Division will assist applicants with specific program requirements during facilities planning the application review. The Division will may also offer assistance to aid applicants in assuring to ensure that they have the ability to administer and manage the construction of the proposed Project.

A. Project Report

A Project Report or its equivalent shall be prepared and submitted as part of the application process. While early submittal is not a program requirement, the Division strongly recommends that applicants submit the Project Report for review in advance of the ten percent (10%) design level effort.

The Project Report must contain, as appropriate, the following:

1. A statement of Project needs and benefits, including a discussion of the water quality benefits of the Project and the public health or water quality problems to be corrected.
2. Proposed Project Service Area and composition.
 - a. Median Household Income (MHI) and population for the proposed Project service area using census data or the most recent income survey if the census data does not accurately reflect the community's MHI. This information is used to analyze various factors, including affordability.
 - b. Total number of active wastewater service connections that are currently and directly served by the wastewater collection system. This includes a breakdown by each category for all domestic or residential, industrial, commercial or other connections. A map for the existing wastewater service area for the proposed Project must be provided.

- c. The average current monthly wastewater charges by category. If the wastewater system uses a “tiered” rate, the charge should reflect what a typical user pays in each category and the basis of the charges. The rate should reflect direct wastewater charges plus any other fees or charges that support the wastewater service such as parcel fees, standby charges, wastewater taxes, and surcharges.
3. A cost effectiveness and climate change evaluation of alternatives over the useful life of the Project. The evaluations presented must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality, and a regional treatment solution.
4. An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process. For wastewater treatment Projects producing sludge material, the following information needs to be identified and compared:
 - a. All landfills within a 100-mile radius that accept sewage sludge;
 - b. Any composting facilities within a 100-mile radius accepting sewage sludge;
 - c. The potential for dedicated land disposal;
 - d. Conversion of sludge to biosolids for distribution as soil amendment or as another agricultural product; and
 - e. Ultimate disposal methods approved by the Regional Water Boards.
5. An evaluation of the non-existence or possible existence of excessive infiltration/inflow (I/I) in the existing sewer system. If the average daily flow during periods of sustained high groundwater is less than 120 gallons per capita per day (gpcd), a Sewer System Evaluation Survey (SSES) is not required. If it is above 120 gpcd, the applicant must perform a SSES to determine whether it is cost-effective to treat or correct the I/I. If a SSES is not submitted, funding will be based on a maximum flow rate of 120 gpcd. If the peak flow during a storm event (highest three-hour average) exceeds 275 gpcd, a SSES must be completed or funding will be based on a maximum peak flow rate of 275 gpcd. Cost-effective corrections under these criteria are eligible for funding. See Appendix ~~OR~~ for further guidance on SSESs.
6. Information on total capital costs, annual operation and maintenance costs.
7. A discussion of the existing population, flows, loadings, and projections of the same, used to estimate the capacity needs for the funded facilities;
8. A discussion of the anticipated eligible capacity for the Project, and how that capacity was derived. (see Section IX.H);
9. A summary of public participation;

10. The following must be submitted for the selected alternative:

- a. A detailed description of the selected alternative and the complete waste treatment system of which it is a part;
- b. A summary of relevant design criteria (i.e., design flow, peak flows, daily Biochemical Oxygen Demand (BOD) or Chemical Oxygen Demand (COD) loadings, daily suspended solids loadings, overflow rates, detention times, sludge production, etc.);
- c. The estimated construction and annual operation and maintenance costs and a description of the anticipated manner in which all the costs will be financed;

a.d. A summary of the cost impacts on wastewater system users. Provide the average projected monthly wastewater charges that will be passed on to wastewater users by category and the basis of the charges during the useful life of the proposed Project. Include any ineligible project costs as well as non-Project-related wastewater system costs that will be imposed on the residential users during the next five years. Also include any income generated by the project, such as income generated by the sale of recycled water;

- e. A summary of the significant environmental impacts of the selected Project and any proposed mitigation measures;
- f. A statement that identifies and discusses the source(s) and the amount of unallocated potable water currently available in the Project service area. If the amount of potable water is less than what is needed to serve the projected population for the proposed Project, a plan identifying how that deficiency will be mitigated shall be presented;
- g. A discussion of facilities that were previously funded by federal/state grants, loans, or other financing, if such facilities are to be repaired or replaced;
- h. A discussion, if applicable, where minority populations are included in the facilities planning area, showing that such areas will be served or excluded from service only for reasons of cost-effectiveness. Applicants must comply with the Civil Rights Act of 1964.
- i. A description of operation and maintenance requirements;
- j. A demonstration that the selected alternative is consistent with any applicable approved water quality management plan;
- k. A summary of public participation; and

Impact Development Best Management Practices to the maximum extent practicable. Agencies that are legislatively prohibited from engaging in these activities are exempt from this requirement. Exempt agencies shall provide a statement in their Project Report citing the legislation and what activities are prohibited.

The information provided in Section IX.A.11 is for information purposes only and is not intended to affect the priority or eligibility of a Project requesting CWSRF funding.

B. Environmental Impact Analysis

1. Final Environmental Documents specific to the final Project must meet general requirements of the California Environmental Quality Act (CEQA). Applicants also must meet any specific CEQA requirements that apply where a state agency and/or the applicant is the “responsible agency” as defined in CEQA. Projects may also be required to conduct additional analysis to demonstrate compliance with federal environmental laws. CEQA compliance in many cases will overlap federal environmental law compliance if adequate information is documented and provided through the CEQA process.

USEPA requires that the CWSRF Program comply with certain federal laws, including environmental laws, (also known as “federal cross-cutters”) for an amount of financing equal to the Federal Capitalization Grants received from the USEPA. The State Water Board is allowed to bank the value of financing agreements that have complied with those federal laws over and above the federal Capitalization Grant amount. If the State Water Board determines that sufficient federal cross-cutters have been banked, the Division may apply a Tier II review (CEQA only review) to all projects. An applicant- may request a Tier I review (CEQA review and federal agency review) of its project regardless of the Board’s determination of federal cross-cutter compliance if it is advantageous to the applicant.

If the State Water Board determines that additional cross-cutter compliance is needed, then the Division will conduct a Tier I environmental review on all projects and coordinate with federal agencies or their designated representatives.

~~In addition to CEQA requirements, Project applicants shall must provide documentation that will allow the Division to or the State Water Board to make a CEQA determination as a responsible agency under CEQA (Tier II review), as well as initiate federal consultation (Tier I review), if required. If information necessary for federal consultation (Tier I review) is sufficiently addressed in the CEQA documents, then the applicant shall identify specifically where this information can be found.~~

~~determine whether compliance with federal environmental laws (Tier I review) is necessary and has occurred. Projects that can adequately document a “no effect” finding under federal environmental statutes, regulations, and policies may qualify for Tier II environmental review. Tier II Projects must still comply with CEQA, but will not involve review by federal agencies or their designated representatives through the CWSRF Program. After adequate environmental documentation is submitted, Division staff will determine whether a Tier I or Tier II environmental review is needed.~~

Detailed environmental review process guidelines, including a flowchart, are contained in Appendix E. At a minimum, the appropriate Environmental Documents shall discuss the items outlined in Appendix E,

consistency with regional plans for wastewater treatment and water quality control, [water quality control plans](#) (basin plans), and [Clean Water Act](#) Section 208 plans.

2. The applicant must submit its draft Environmental Documents (i.e., CEQA documents) to the Governor's Office of Planning and Research, State Clearinghouse for public distribution and comments. The draft Environmental Documents must be distributed for review and comment to other responsible (as defined in CEQA) local and State agencies within the Project's service area. The State Water Board, as a responsible agency, reviews and comments on draft Environmental Documents received from the State Clearinghouse.

~~Division staff~~ is highly recommendedes that applicants ensure ~~that~~ their draft Environmental Documents are sent to the Division if they have any plans to seek CWSRF financing. Applicants should ~~and~~ notify the Division staff directly of their intent to seek CWSRF financing so that Division staff can comment on the Environmental Documents during the draft stage.

- 3.- The applicant must submit its final Environmental Document to the Division. In addition, copies of other reports and information pertaining to compliance with state and federal environmental laws must be submitted (such as, Biological Assessments, research on cultural or historical resources, air quality data, and flood maps). ~~Division staff will review the Environmental Document and other information to determine whether a Tier I or Tier II review is necessary.~~

Under some circumstances, a Project may be approved under a statutory or categorical exemption from CEQA. In these cases, a Notice of Exemption (NOE) must be filed with the County Clerk and the Governor's Office of Planning and Research, State Clearinghouse. A copy of the signed and stamped NOE and supporting evaluation must be sent to the Division. Compliance with applicable federal environmental laws regulations may still be required for CEQA exempt Projects, ~~and may involve consultation with federal agencies and/or their designated representatives.~~

In addition to submitting the final Environmental Document and associated information, the applicant must also submit to the Division copies of the following:

- ✓ Resolution or similar documents certifying or adopting the document and making appropriate findings, including any Statement of Overriding Considerations for adverse environmental impacts that can not be avoided or fully mitigated for the Project that is selected;
- ✓ An adopted mitigation monitoring and reporting plan program, if there are proposed mitigation measures (compliance with this program ~~lan~~ will be a condition of the financing agreement); and
- ✓ The Notice of Determination (or NOD) filed with the County Clerk and Governor's Office of Planning and Research.

If ~~Division staff determines that~~ a Tier I review is needed, eight (8) copies of the Environmental Documents (the Project-specific documents and any public comments received and the responses to those comments) must be submitted to the Division for distribution to designated agencies responsible for implementing federal environmental laws. The applicant

must respond directly to all comments received from federal agencies and/or their designated representatives.

~~Tier I CWSRF Projects are subject to the provisions of the federal Endangered Species Act (ESA).~~ Projects required to pass a Tier I review must obtain ESA Section 7 clearance through the Division from the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) prior to a Preliminary Funding Commitment. The applicant must describe the Project and Project area (such as in a Biological Assessment specific to the Project), document the potential for the presence or absence of federal special status species in the Project area and any Project effects (both direct and indirect), and identify applicable avoidance and/or conservation measures to be taken to avoid and/or minimize impacts.

When adequate information has been received, Division staff will informally consult with USFWS and/or NMFS on behalf of the applicant for all federal special status species the Project has the potential to impact if no other federal agency has initiated the consultation process. Coordination with USEPA may be needed if formal consultation is required. Conditions or measures identified by USFWS and/or NMFS will be included in the financing agreement.

Tier I CWSRF Projects must ~~comply~~ obtain clearance through the Division with federal laws pertaining to cultural resources, specifically Section 106 of the National Historic Preservation Act. CWSRF applicants must document the presence or absence of cultural resources in the Project area, their significance, and any Project effects. This documentation must be prepared by a researcher meeting federal professional standards for the type of resource in question. Appendix E provides details about the required information. When adequate information has been submitted to the Division by the applicant, the Division's Cultural Resources Officer will review it for Section 106 compliance, will make appropriate findings and ask for State Historic Preservation Officer (SHPO) concurrence on those findings. SHPO concurrence must be obtained prior to both execution of the financing agreement and initiation of construction. Conditions identified by the SHPO will be included in the financing agreement.

4. Use of previously prepared Environmental Documents is acceptable provided the procedures and guidance in Sections 15153, 15162-15164, 15168, or 15221 of the ~~State~~ CEQA Guidelines are followed and Project-specific information is adequately addressed and easily identified.

Environmental documents must have been adopted by the lead agency less than five years before the execution of the financing agreement. If the environmental documents are more than five years old, the applicant must re-evaluate the environmental documents and issue a public notice explaining the results of the re-evaluation. The re-evaluation can be done through updated environmental documents (e.g., Supplemental Environmental Impact Report [EIR], Addendum, Subsequent EIR), or any

other appropriate document, for the Project. The applicant shall provide a copy of the re-evaluation and public notice regarding the Project.

5. The State Water Board will make its own CEQA findings and determinations based on the adequacy of the lead agency's documents. If a Preliminary Funding Commitment is approved, the Division will prepare its own NOD and file it with the Governor's Office of Planning and Research, State Clearinghouse.

C. Water Conservation

The State Water Board will not execute a financing agreement for a Project until the applicant has adopted a water conservation program consistent with local ordinances and authorities. In lieu of adoption of an independent water conservation program, the applicant may 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.

The Urban Water Management Planning ~~Act-Law~~, Water Code, ~~Part 2.6;~~ Section 106310.5-~~et. seq.~~, requires every urban water supplier to prepare and adopt an Urban Water Management Plan that includes specific elements. Urban water suppliers, either publicly or privately owned, providing water for municipal purpose 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 ~~ActLaw~~. Agencies may submit an Urban Water Management Plan instead of a Water Conservation Program ~~into meeting~~ the water conservation requirement (Wat. Code §10653.)

If the applicant is not a water purveyor, it must (1) certify that seventy-five (75) percent of the water connections in its service area are covered by adopted water conservation programs approved by the Division or (2) demonstrate that the water purveyor(s) have signed the Memorandum of Understanding covering at least seventy-five (75) percent of the water connections within the applicant's sewer service area.

~~If neither of these requirements can be met before the issuance of the preliminary funding commitment, the applicant must submit a specific time schedule for local adoption of a water conservation program.~~ See Appendix F for further information.

The Division may waive the requirements of this section under the following circumstances: the water supplier for the community serves 3,000 or fewer customers and the costs to prepare a document to satisfy the CWSRF Policy requirements are found to be burdensome to the supplier in light of the benefits derived from the Water Conservation plan.

D. General Planning

If the applicant is responsible for adopting the General Plan(s) for the area affected by a proposed Project, the Division may not give FPA 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 and that the Project is consistent with the adopted General Plan.

If the applicant is not responsible for adopting the General Plan(s) for the area affected by the Project, then the Division may not give FPA 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 document 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 will certify that the applicant considered those comments during development of the Project.

E. Credit/Legal Review

The Division will perform a credit/legal review to determine the applicant's creditworthiness and recommend a maximum funding amount based on this review.

The process for completing the credit review is as follows:

- Applicant submits the information noted in the “Credit Review,” Section IX.E, along with user information required in “~~Facilities Planning Project Report~~,” Section IX.A.
- The Division will forward this information to its ~~credit consultant/raCTOR,~~ CalMuni, for analysis. The credit consultant CalMuni will determine the applicant’s credit worthiness based on a process modeled on those that used by the major rating agencies (Standard & Poor’s, Fitch, and Moody’s) and actual/projected revenues.
- The Division will establish a credit limit for the applicant in consultation with ~~CalMuni~~the credit consultant. This will be the basis for the ~~Preliminary Funding Commitment (PFC)~~ initial financing agreement amount. The ~~PFC~~ will financing agreement may contain a condition requiring that the applicant approve the necessary revenues to repay the CWSRF financing agreement before ~~the agreement can be executed~~ funds for construction can be disbursed.
- If the applicant’s project financing cost exceeds the credit limit at any time, the Division staff will work with ~~the credit consultant CalMuni~~ and the applicant to find a way to finance the project, if feasible.

All Applicants shall comply with the Credit Review requirements. For all applicants, no bond, loan, or debt defaults may exist as of the date the financing agreement is executed. Prior defaults may be grounds for disapproval, depending on the circumstances.

1. Election/Proposition 218

The applicant shall submit evidence that any revenue derived from property related fees and charges needed for the project or the debt associated with the project has been approved in accordance with Article XIII(c) and XIII(d) of the California Constitution, Proposition 218, or a legal opinion explaining why those procedures are not applicable. The net revenue to debt coverage shall be at least 1.2 to 1.0 for all senior debt and 1.1 to 1.0 for the highest year’s debt service after completion of project construction. If the necessary revenue subject to Proposition 218 requirements has not been approved, a financing agreement may be executed, but funds for construction will not be ~~approved~~ disbursed until the rates are approved.

If an applicant has awarded a construction contract for its project as of September 16, 2008, the Division may execute the financing agreement for the project. The Division, however, may not disburse more than 25 percent of the financing agreement until the applicant has submitted evidence that the necessary revenue has been approved for the project pursuant to applicable election or Proposition 218 procedures or provided a legal opinion explaining why an election or Proposition 218 procedures are not applicable.

2. Dedicated Source(s) of Funds

Section 603(d)(1)(C) of the Federal CWA requires each financing recipient to establish one or more dedicated sources of revenue for payment of the financing agreement. A dedicated source can be general taxes, user fees, a special assessment, or other acceptable sources.

Revenue will be considered dedicated when the Agency passes an ordinance or resolution committing a source of funds for payments. ~~The Agency must submit a draft ordinance or resolution dedicating a legal and adequate source of revenue for payment of the CWSRF financing agreement before FPA.~~—The ordinance or resolution dedicating a source of revenue for payment of the CWSRF financing agreement must be adopted by the Agency’s governing board before ~~execution approval~~ of the Preliminary Funding Commitment (PFC) financing agreement.

Ordinance or resolution language equivalent to the following example is acceptable:

The (Agency) hereby dedicates the following source ~~of~~ revenue (user charge proceeds or revenue bonds, etc.) to pay any and all Clean Water State Revolving Fund financial agreement(s) on Project No. C-06- xxxX-xxx. This dedicated source of revenue shall remain in effect until such financing agreement is fully discharged unless the State Water Resource Control Board approves modification or change of such dedication in writing.

3. Financial Statements and Security

- a. The applicant shall provide three years of financial statements. The financial statements must include current year (if available), and two years prior (Audited financial statements are preferred).
- b. The applicant shall identify any cash reserves and the planned uses of the cash reserves shown in the financial statements.
- c. The applicant shall identify other sources of security if needed for a financing agreement, such as, assessments, stocks, Surety Bonds from an insurance company, or property. If using property, provide an estimate of the value, how the value was determined, and whether the property is pledged as security for another financing agreement.

4. Litigation or Adverse Findings

The applicant shall describe any pending or anticipated litigation, and contractual or ratepayer/taxpayer disputes or adverse findings by outside reviewers that may detrimentally affect the applicant’s payment source, or the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program.

5. Existing Indebtedness

- a. For the purposes of the following, “existing debt” means the applicant’s existing debt that relies on the same pledged revenue source as the applicant is pledging for payment of the CWSRF financing.
- b. The applicant shall submit a schedule of existing debt. This schedule will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). The schedule will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.
- c. The applicant shall submit a letter from the Agency’s bond counsel (in certain circumstances local counsel will be adequate) that:
 1. Cites the relevant provisions in each of the applicant’s existing debt documents listed in the schedule (other than CWSRF debt) that affect its ability to enter into and repay the requested financing.
 2. Provides counsel’s opinion about whether those conditions have been met, and
 3. Provides counsel’s opinion about whether those documents preclude the applicant’s ability to agree to the CWSRF financing agreement.

If the applicant has no other debt (except other CWSRF debt), the Agency’s Authorized Representative must provide a letter stating this.

- d. For all existing debt (other than CWSRF debt), the applicant shall submit the relevant debt document (loan agreement, bond indenture, etc.) by digital or paper copy. The applicant may be required to submit supplemental materials (Offering Statement, maturity schedules, etc.), particularly in the case of multiple series indentures or large debt loads.

6. Future Capital Needs

The applicant must describe its capital improvement plans and the long-term indebtedness needed to fund future capital improvements.

F. Other Submittals

1. **Legal Authority:** The applicant shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant’s legal counsel for follow up questions from State Water Board legal counsel.
2. **Tax Questionnaire:** The applicant shall provide ~~a completed, as part of its signed tax questionnaire application, information for the State Water~~ a completed, as part of its signed tax questionnaire application, information for the State Water

Board's tax counsel to assess the Agency's ability to receive CWSRF funds from tax-exempt revenue bond financing sources.

3. Joint Powers Agreement: The applicant shall provide a copy of any Joint Powers Agreement for the proposed Project with a summary explanation of the shared financial, construction, and management responsibilities of each Agency.
4. Agency Resolution(s): Agency Resolutions are required authorizing the application, the financing amount (at the option of the applicant), Local Match (if local match financing is requested), and designating an Authorized Representative (named or position title).
5. ~~Legal Opinion~~-Access and Ownership of Land: Applicant ~~shall provide an opinion from competent counsel addressing whether the applicant has the legal authority must have sufficient property rights in the land used for all portions of the Project to enable it~~ to access, construct, operate, ~~and maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer. The applicant or applicant's attorney must certify that such property rights exist, and must state what type of property rights they are, and to which portions of the Project a particular right applies. the proposed Project for the life of the CWSRF financing. The Division prefers to receive this Legal Opinion~~ Access and Ownership of Land: Applicant shall provide an opinion from competent counsel addressing whether the applicant has the legal authority must have sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, and maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer. The applicant or applicant's attorney must certify that such property rights exist, and must state what type of property rights they are, and to which portions of the Project a particular right applies. the proposed Project for the life of the CWSRF financing. The Division prefers to receive this Legal Opinion If the applicant is not able to submit such a certification with the application, however, the Division must may execute the financing agreement receive it prior to Approval To Award to proceed with financing agreement execution, but may not disburse funds for construction until the applicant can make such a certification.

The Division may request additional documentation to substantiate an applicant's access and ownership to lands for the Project.

G. Eligible Project

Project components at publicly-owned facilities, other than reserve capacity, are intended to be completely eligible or ineligible. The following are categories of eligible and ineligible costs:

1. Eligible
 - a. Treatment facilities, including new collection systems in existing developed areas within the 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 part 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. Reserve capacity for treatment plants and pipelines; (See below for details);

- c. Reasonable administration and laboratory building space directly related to the operation of the eligible facilities;
- d. Process control systems;
- e. Mitigation measures (except for land) mandated by State and/or federal agencies;
- f. Eligible Change Orders approved by the Division, not to exceed the Approval-~~to~~-Award amount, provided the recipient documents eligible positive and negative Change Orders;
- g. Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the Water Recycling Funding Program (WRFPP) Guidelines in Appendix D;
- h. On-site solids handling systems necessary to meet waste discharge permit requirements (Includes systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal);
- i. Stationary and mobile equipment which are an integral part of the wastewater or sludge handling process such as front loaders for sludge drying beds, injection equipment for dedicated land disposal sites, and compost windrow turners. Equipment must be confined to the treatment plant or disposal site owned by the recipient;
- j. ~~Allowances-Costs~~ for planning, design, construction management, and prime engineering, value engineering, and administration;
- k. Cost to prepare an Environmental Management Systems (EMS) and Asset Management Systems;
- l. Special equipment necessary to maintain the eligible treatment facilities, including the manufacturer's list of spare parts;
- ~~lm.~~ Necessary insurance related to the construction contract;
- ~~mn.~~ Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system.
- ~~no.~~ Recycled water systems (not including gray water systems);
 - 1. Recycled water treatment works;
 - 2. Recycled water storage facilities;
 - 3. Recycled water pumping facilities;
 - 4. Recycled water ground water recharge facilities;

- 5. Recycled water distribution systems;
- 6. Recycled water onsite user retrofits on publicly owned use sites;
- and
- 7. Recycled water capacity purchases (buy in costs).

ep. Water conservation measures:

- 1. Installation of water supply meters;
- 2. Plumbing fixture retrofits or replacements;
- 3. Use of efficient landscape irrigation equipment; and
- 4. Public water conservation education programs.

2. Ineligible

- a. All land, easements, and rights of way, except purchase of lands, rights-of-ways, and easements for land that will be an integral part of the treatment process or will be used for sludge disposal;
- b. Contingencies and honorariums;
- c. House laterals for collection systems and any in-house facilities;
- d. Engineering costs included as part of the construction bid for other than Design-Build projects;
- e. Decorative items (art work, sculptures, reflective ponds, fountains, etc.);
- f. Solids handling facilities that perform pasteurization, co-generation, conditioning, heat drying, thermal reduction, and facilities for packaging or distributing biosolids;
- g. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
- h. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;
- i. All other items not included in the construction contract except allowances; and
- j. Replacement of previously grant funded facilities ~~are~~is ineligible except for the following specific cases:
 - (1) Where an amendment to a basin plan adopted by a Regional Water Board requires upgrading of specific treatment systems or technology to achieve a mandated enhanced level of treatment, and the replacement of previously grant funded facilities is necessary to achieve the

mandated enhanced level of treatment required by the amendment;

- (2) Where a proposed water recycling Project that meets the definition of an eligible water recycling Project contained in the most recently amended WRF Guidelines (See Appendix D) adopted by the State Water Board ; and which is proposed to use recycled water to replace a bonafide current or proposed beneficial consumptive use of potable water; and where replacement of previously grant funded facilities is necessary to install the recycling Project;
- (3) Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable operation of the facility.
- (4) Notwithstanding any other provisions of this policy, the State Water Board may consider granting an exception to this policy in the event that the State Water Board, after a meeting, makes a finding that the petitioner suffers from severe hardship or unique circumstances.

The above eligible and ineligible items must be segregated in the engineer's estimate.

H. Capacity Funding Limitations

The eligible capacity of Publicly Owned Treatment Works (POTWs) shall be determined using average dry weather flow (ADWF) and appropriate peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

Eligible capacity for POTWs will be up to a period of twenty (20) years from the estimated Project completion date. For Projects with a design capacity greater than 20 years, eligible and ineligible costs shall be determined on an incremental basis. Eligible capacity for multiple phased Projects shall be determined on a case-by-case basis.

Eligible capacity for collection systems, interceptors and outfalls will be up to forty (40) years from the estimated date of Project completion. Allocation between eligible and ineligible costs shall be determined on an incremental basis. Eligible Capacity for multiple phased Projects shall be determined on a case-by-case basis.

Eligible capacity shall be calculated by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the per capita flow shall be based on the existing population and the measured flow. The flow thus calculated will be deemed to include the entire eligible Project flows (residential, commercial, existing

federal facilities, existing industrial, and infiltration/inflow). Eligible capacity will be determined at the facilities planning stage.

The applicant will be responsible for documenting, in the facilities plan, the peaking factors used for the Project.

I. Population or Flow Projections

Population projections must be from an independent agency (i.e. Regional Council of Governments, appropriate local planning agencies, Department of Finance, or Areawide Water Quality (208) Management Plans). Population or flow projections will be used to determine the eligible Project capacity. Depending on the apparent reasonableness of the local projection, the Division may require additional documentation to support the reasonableness of the projection. A detailed discussion of the local projections should be included in the Project Report.

J. Industrial and Federal Facilities

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

K. Preliminary Funding Commitment

1. The Division may request a Preliminary Funding Commitment from the State Water Board after the Division has issued a FPA and the applicant has concurred with the FPA. ~~The funding application must be submitted before the Project is considered for the preliminary funding commitment.~~ The ~~p~~Preliminary ~~f~~Funding ~~e~~Commitment ~~will may contain conditions that must be met by the applicant and~~ ~~expiration e~~at the ~~date(s)~~ established by the Division. Following the ~~p~~Preliminary ~~f~~Funding ~~e~~Commitment and prior to design ~~or Request for Design-Build Proposal~~ completion, the applicant is required to advise the Division whether the proposed Project will be completed using Design-Build or the Design-Bid-Build (normal) method of construction.
2. For routine, noncontroversial Projects on the Statewide List, the Deputy Director of the Division or designee is authorized to make ~~p~~Preliminary ~~f~~Funding ~~e~~Commitments.
3. For any Project, including non-routine, controversial Projects, the Deputy Director or designee may approve up to a one hundred and twenty (120) day extension of the Preliminary Funding Commitment ~~expiration date(s)~~ for good cause.

~~L. Design-Build Projects~~

~~Applicants requesting CWSRF assistance for Design-Build Projects will be required to complete both a facilities planning process and a Design-Build selection process. The planning process will follow the planning documentation requirements described under Section IX above, and the Design-Build process will follow a two-phase selection process. The two-~~

~~phase selection process is a procurement process, which includes the preparation of a Request for Design-Build Qualifications (RFQ) to pre-qualify the bidders and a Request for Design-Build Proposals (RFP) from the pre-qualified bidders. For additional information on implementation of the Design-Build process, it is recommended that the applicant refer to the RFQ/RFP Guide Section of the 'Design Build Manual of Practice' published by the Design-Build Institute of America (DBIA) (Phone No. (202) 682-0110).~~

~~Before a RFP is issued, the applicant must complete a RFQ process. The applicant shall prepare RFQ documents for the selection of the most qualified Design-builders who have the greatest potential to design and build the proposed Project and submit the documents to the Division for review and approval. In this document, the applicant must establish clear and objective standards or criteria which will be used to determine the most qualified firms to be invited to prepare and submit a Design-Build bid proposal. Responses from Design-builders must be evaluated and Design-builders must be pre-qualified by the applicant before issuing a RFP.~~

~~Before the RFP is finalized, the applicant shall select a Design-Build Technical Review Panel (Panel) to review the RFP. See below for the Panel selection requirements. The RFP must provide enough information to clearly explain the Project objectives and the design intent. At a minimum, Project objectives, process treatment requirements (design criteria), unit processes, external constraints that apply to the Project, site definition, geotechnical investigations, process definition, performance requirements, permit requirements, and similar information needs to be provided. The minimum effort is similar to completion of a preliminary design that represents approximately 15 to 20 percent of the conventional design effort.~~

~~The Panel shall review the RFP to insure the Design-Build objectives and conditions, as discussed below, are described properly and accurately. Based on the results of the Panel's review, the RFP will be finalized. Only those Design-builders who are pre-qualified by the applicant will receive the RFP and only they may submit a Design-Build bid proposal. The RFP must provide a scope of work that is sufficiently detailed to allow pre-qualified bidders to produce cost-effective bid proposals. Also, criteria for selection of the successful bidder should be communicated clearly and structured such that the qualification-based bidding process is reinforced.~~

~~The final RFP shall be prepared and submitted to the Division along with a copy of the adopted Waste Discharge Requirements (WDRs) issued by the Regional Water Board. While early submittal is not a program requirement, the Division strongly recommends that applicants submit a draft RFP for review well in advance of soliciting bids. The final RFP shall be submitted to the Division for review and approval before advertising for bid proposals.~~

~~The applicant will evaluate the bid proposals and make the final selection of the bid proposal that provides the best value. Best value is determined by both qualitative factors (e.g., design solution, management and schedule) and proposed bid price in the evaluation and selection process. The Panel that~~

~~was used to review the RFP will also review the applicant's evaluation of the bid proposals and make a recommendation to the applicant. If the applicant does not concur with the Panel's recommendation, the applicant must provide the Division with the justification for not considering the Panel's recommendation. The Division reserves the right to reject the applicant's selection if not fully justified. The final financing agreement and the Approval to Award (ATA) the Design-Build contract will be issued by the Division after the successful bidder is selected by the applicant and ATA must be obtained from the Division before initiating construction.~~

~~M. Technical Review and Panel Selection Requirements for Design-Build Projects~~

~~The preparation of a RFP for all Design-Build Projects must be undertaken by CWSRF applicants with the assistance of individuals knowledgeable of public contracting requirements, and with the help of professionals experienced in the application of the performance criteria appropriate to facility needs.~~

~~All CWSRF applicants for Design-Build Projects shall meet the following technical review and Panel selection requirements prior to the completion of preliminary (up to 20 percent) design.~~

- ~~1. The proposed technical review effort should be completed in accordance with the RFQ/RFP Guide Section of the Design-Build Manual of Practice published by the DBIA or equal.~~
- ~~2. The technical review must insure that the RFP outlines: 1) the Design-builder selection criteria clearly; 2) details the Project description, Project objectives, design intent, design criteria, unit processes, responsibility/risk allocation, and submittal requirements; 3) includes the responsibilities of the owner, Design-builder, Design-builder's architect (including the engineer and other professionals); 4) specifies responsibility for performance, scheduling, permits, fees and insurance; 5) specifies liquidated damages (if any); 6) and addresses other construction related issues properly and accurately. In addition, the applicant's needs must be described precisely and in a manner that will be universally interpreted and understood.~~
- ~~3. The applicant's consultant, or any company affiliated with the consultant, responsible for performing any portion of the Project design, assisting in preparation of the RFP, or performing the technical review of the RFP, is not permitted to participate on a team to bid on the Design-Build proposal.~~
- ~~4. The applicant's consultant, or any company affiliated with the consultant, but responsible for performing only the Project planning, is permitted to bid on the Design-Build proposal.~~
- ~~5. The applicant, and or consultant, or any company affiliated with the consultant, responsible for performing the Project planning, preparing~~

~~preliminary design, or assisting in the preparation of the RFP, is not permitted to be the leader of the Panel or comprise more than twenty (20) percent of the Panel membership.~~

~~6. The Panel leader will be selected by the applicant using a qualifications-based selection process (Cal. Govt. Code Section 4525-4529).~~

~~It is highly recommended that applicants submit a Request for Proposal for Technical Review Services (Proposal) to the Division for review prior to soliciting Panel members. This will eliminate the necessity to re-advertise if the Proposal or the Panel is found not acceptable by the Division. Once the Panel is selected, the applicant must submit the results to the Division for approval, including copies of the proposal, a description of the selection process, and the qualifications of the selected Panel members.~~

~~The cost of the technical review effort is included in the planning allowance described in Section XII.B.~~

~~Failure to complete a technical review effort, in accordance with the referenced DBIA manual, or equal, and the provisions stated above, will result in the proposed Project being ineligible for CWSRF funding.~~

~~X. PLANS AND SPECIFICATIONS~~

~~A. Review Procedures~~

~~The primary focus of the review of the Final Plans and Specifications (P&S) will be to determine if the design is consistent with the facilities described in the FPA letter, if the proposed Project, in concept, will meet WDRs, and if it will comply with applicable federal and State CWSRF Program requirements. The Final P&S must be approved by the Division and the applicant must agree to the eligibility determinations and performance certification standards prior to issuance of the financing agreement.~~

~~Applicants, at their option, may submit preliminary P&S for review if they would like an initial review prior to finalizing the Project P&S. Applicants may also request, at their option, a detailed design review of the P&S by the Division with any comments resulting to be forwarded to the applicants and their consultants.~~

~~For Design-Build Projects, the review and approval of the design of the Project will be carried out in a three-phased approach. The first review will be done after the RFQs are submitted to the Division to determine if the evaluation and selection process used for pre-qualifying bidders is fair and equitable and that the selection criteria is described accurately and completely. The second review will be after the RFP is submitted to the Division to determine the Project component eligibility; to establish Project performance standards; and to verify that the proposed Project is consistent with the facilities described in the FPA letter. The third review is after the applicant has selected the~~

~~successful low bidder and the ATA is submitted to the Division. Design review during the third phase will be limited to assuring that the Project being designed and constructed is consistent with the facilities described in the Facilities Plan and is the same as described in the RFP approved by the Division, and also to check if the proposed Project, in concept, will meet WDRs, and to assure its compliance with federal and State programs' constructability and biddability requirements.~~

~~B. Value Engineering~~

~~Applicants with estimated total Project construction costs greater than \$35 million must conduct a Value Engineering (VE) study. VE studies are also recommended for Projects costing less than \$35 million because of the potential cost savings and design improvements resulting from the VE process. An extra allowance amount will be provided for applicants conducting VE studies for Projects costing less than \$35 million. (See Appendix I Allowances).~~

~~The VE study report shall be submitted with the Final P&S. The VE study report shall describe all the VE recommendations. If any VE recommendations are not being implemented, the submittal shall discuss the reasons for rejection. Applicants should consult with the Division's assigned Project Manager at the ten (10) percent design stage regarding VE requirements. (See CWSRF Guidance Memorandum No. 3, Appendix C).~~

~~For Design-Build Projects, irrespective of the Project cost, an independent technical review shall be conducted prior to the completion of the RFP. The RFP shall contain the results of the technical review and form the basis for the bidding documents. For information on conducting independent technical reviews, please see Section IX.L. This technical review will replace the VE requirements that apply to normal design and construction Projects.~~

~~C. Project Performance Standards~~

~~The performance standards for a Project shall be established during the design eligibility review process, or during preparation of the Design-Build RFP. During design review, the applicant and the Division will mutually agree on specific Project performance standards for CWSRF funded facilities. At the end of the one-year Project performance certification period, actual operating data must be compared with the Regional Water Board Waste Discharge Requirements and the Project performance standards.~~

~~Project performance standards may be established in one of two ways:~~

- ~~1. The Division will develop performance standards based on Division guidelines, or~~
- ~~2. The recipient may develop performance standards for Division approval.~~

~~Project performance standards shall be based on the Regional Water Board's WDRs. The standards will describe data necessary for Project certification. For non-discharging Projects (such as I/I correction and pump stations), the Project performance standards include the elimination of overflows and reduction of I/I to the levels specified in a SSES.~~

~~The applicant and the Division will mutually agree on the Project performance standards before FP&S approval, or Design-Build RFP approval. The agreement on Project performance standards will be included as part of the financing agreement. Further information on Project performance standards is included in Appendix J, Guidelines for Project Performance Certification.~~

~~D. Labor Wage Provisions~~

~~The recipient must comply with State wage determinations. The FP&S will be reviewed to make sure the proper wage determination provisions have been inserted in the specifications. The recipient will be responsible for assuring compliance with applicable labor laws.~~

~~E. Minority Business Enterprise/Women's Business Enterprise (MBE/WBE)~~

~~MBE/WBE is applicable only to Tier I Projects and does not apply for Tier II Projects (see Section IX.B). The recipient must insert the following forms in its contract bidding documents: (1) Contract Provisions Relative to MBE/WBE; (2) MBE/WBE Self Certification; and (3) Selected MBE/WBE Subcontractors Form. A pre-bid conference with the prospective bidders is strongly encouraged to explain the MBE/WBE "positive effort" requirement.~~

~~The recipient must submit six MBE/WBE forms with the ATA request package. These are: (1) "Good Faith Effort" Solicitation listing; (2) "Good Faith Effort" Bids Received list; (3) Attachment A, Subcontractor Self Certification; (4) Attachment B, Selected MBE/WBE Subcontractors (submitted with the bid); (5) Summary of Bids Received; and (6) the applicant's MBE/WBE Positive Effort Certification (see Appendix K, MBE/WBE Compliance Guidelines).~~

~~If acceptable "Good Faith" effort steps have not been taken, the Division cannot authorize the award of the construction contract. Selecting the next low, responsive, responsible bidder, or rebidding the contract, are acceptable alternatives for the recipient if CWSRF assistance is still desired. The financing agreement will be amended to reflect the costs of selection of the next low, responsive, responsible bidder or the low, responsive, responsible bidder after rebidding.~~

~~Recipients shall report MBE/WBE utilization to the Division on the MBE/WBE Utilization Report, State Water Board Form MBE/WBE UR334 (See Appendix L). Reports must be submitted to the Division within ten (10) calendar days following the end of each federal fiscal quarter until such time as the "Notice of Completion" is issued.~~

~~XI. COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES~~

~~If the analysis per Section IX.B results in a Tier I determination then recipients will be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in this section. If a CEQA analysis per Section IX.B results in a Tier II determination, then recipients will NOT be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in Section XI.~~

~~Prior to issuance of the financing agreement, applicants will be required to certify that they have complied, or will comply, with all the other federal authorities listed in Appendix M.~~

~~XII. ALLOWANCES~~

~~A. Normal Allowances~~

~~A fixed amount of funds will be provided to the recipient to partially offset costs for planning, design, construction management, administration, and prime engineering. An additional design allowance (see Appendix I) is included for applicants doing VE studies for Projects costing less than \$35 million. For Projects costing more than \$35 million, the cost of the VE study is included in the design allowance. Payment of the planning and design allowances will be made on actual costs incurred and may be requested as soon as the financing agreement is executed. The allowance amounts will be determined from the eligible construction costs at the ATA stage.~~

~~B. Design-Build Allowances~~

~~The allowance for Design-Build Projects will be determined by entering the allowance tables (See Appendix I) at the amount proposed by the Design-Build contractor. The amount for design will be multiplied by 80 percent and that amount deducted from the Design-Build contractor's proposed amount. The resulting amount (construction cost) will be used to reenter the tables for all allowances. Twenty percent of the design allowance calculated will be added to the planning allowance. No allowance will be allowed for design. For Design-Build Projects with construction costs under \$35 million, the value for VE will also be added to the planning allowance. For example: the Contractor's bid amount for a treatment plant is \$35 million. The Design Allowance for \$35 million is \$1,438,395. Eighty percent is \$1,150,716. The construction cost is \$33,849,284 (\$35,000,000 - \$1,150,716).~~

~~The allowances for \$33,849,284 normal Project are:~~

Planning	\$ 666,065
Design	\$1,430,442
Construction Management	\$2,997,516
Administration	\$ 304,644
Prime Engineering	\$ 78,055
Value Engineering	\$ 35,000

~~For a Design-Build Project, the allowances are:~~

Planning	\$ 987,153
	[\$666,065 + (20% x \$1,430,442) + \$35,000]
Design	\$ 0
Construction Management	\$2,997,516
Administration	\$ 304,644
Prime Engineering	\$ 78,055

The allowance should not be construed to represent a limit for each Project. Needs must be considered on the basis of specific factors associated with that Project. Such consideration could result in engineering costs which are appropriate and which could be higher or lower than the amount of the allowance. There are separate tables for pipeline Projects and treatment facilities. The tables provided in Appendix I also take into account Projects that may have received previous grants for planning and/or for design.

The final allowance will be calculated based on the eligible low bid amount. The tables included in Appendix I of this Policy should only be used to estimate the amount of the allowance.

XIV. CONSTRUCTION FINANCING AGREEMENT

A. Execution of the Financing Agreement and Retroactive Costs

The construction financing agreement may be executed after the Preliminary Funding Commitment. The Executive Director, Deputy Director of the Division, or designee, may execute such agreements and amendments on behalf of the State Water Board. No funds will be disbursed until after a financing agreement has been fully executed. However, Projects may receive funding for eligible Project construction costs incurred after the Division has approved the Final Plans and Specifications (FP&S) or the Request for Proposal. Eligible allowances that were incurred prior to the financing agreement may be disbursed after execution of the financing agreement. Costs previously disbursed under a planning financing agreement are not eligible for reimbursement. Portions of the Project constructed prior to FP&S approval are not eligible for CWSRF funding, except for allowances. Eligible Project construction or equipment procurement costs may be disbursed after the Division has received an Approval of Award (AOA) request and the applicant has agreed to the Division's AOA decision by executing or amending a financing agreement that incorporates the AOA decision.

B. Normal Allowances (Soft Costs)

A fixed amount of funds will may be provided to the recipient to partially offset costs for planning, design, value engineering, construction management, and administration. An additional design allowance (see Appendix I) is included for applicants doing VE studies for Projects costing less than \$35 million. For Projects costing more than \$35 million, the cost of the VE study is included in the design allowance. Payment Disbursement of

soft costs of the planning and design allowances will be made on actual costs incurred and may be requested as soon as the financing agreement is executed. The allowance soft cost amounts will be determined from the eligible construction costs at the ATA stage based on the amount requested by the applicant. The soft costs will be reviewed and approved by the Division based on Project documentation submitted to support soft costs incurred.

AC. Interest Rate, ~~and~~ Service Charge, ~~and~~ DAC Funding

The Service Charge provides funding for administration of the CWSRF Program. These costs were previously funded by the ~~f~~Federal Capitalization gGrants the Program receives. Since these grants have been declining, though, the Legislature approved redirecting some of the interest earnings on financing agreements to administration of the Program to replace any funds not provided by the grants. The interest is reduced on financing agreements that include the Service Charge so that the overall payment is the same whether a Service Charge is applied or not.

The DAC Funding Charge provides a source of grant funding for DACs (up to a maximum of \$50 million). AB 2356 was passed and signed in to law in 2008. This law approved redirecting some of the interest earnings on financing agreements to the Small Community Wastewater Grant Funding Program to help make projects more affordable for DACs. The interest is reduced on financing agreements that include the DAC Funding Charge in the same way that interest is reduced for agreements with the Service Charge so that the overall payment is the same whether a DAC Funding Charge is applied or not.

The interest rate for CWSRF financing agreements shall be half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the ~~Master File~~Preliminary Funding Commitment is ~~approved~~determined to be complete. If the bond rate is not a multiple of 0.1, then the Division will round up to the nearest 0.1 percent. Where a ~~s~~Service ~~e~~Charge and/or DAC Funding Charge is included in the financing, the combined interest and ~~service~~-charge(s) shall be equivalent to half of the most recent general obligation bond rate obtained by the State Treasurer's Office, rounded up to the nearest 0.1 percent.

D. Disadvantaged Community (DAC) Incentives

1. A DAC with a MHI less than 80 percent of the statewide MHI:

- a. May receive Extended Term Financing, consistent with USEPA's approval, if wastewater rates are 1.5 percent or more of the DAC's MHI.
- b. May receive a reduced interest rate not less than zero percent to the extent necessary to reduce wastewater rates to 1.5 percent of the DAC's MHI.

c. If reduced interest rates are not sufficient to lower wastewater rates to 1.5 percent of the DAC's MHI, then the DAC may receive any additional subsidy that may be available and offered by the State Water Board through the CWSRF to the extent necessary to reduce wastewater rates to 1.5 percent of the DAC's MHI.

2. A DAC that pays at least four percent of its MHI for wastewater rates may receive Extended Term Financing if approved by the State Water Board consistent with USEPA's approval.

3. A DAC may receive the other incentives offered by the State Water Board in Section X.E in lieu of the incentives in this Section if it is more advantageous to the community.

E. Other Incentives

1. The State Water Board may lower the interest rate determined in X.D for a specified class of borrowers or type of project after a public meeting.

2. The State Water Board may provide other financial incentives allowed by law for a specified class of borrowers or type of project after a public meeting.

FB. Cost Increases

After the financing agreement is executed or amended based on the AOA, all Project changes that result in cost increases will be the responsibility of the recipient. Change order increases that are offset by change order decreases may be funded after the construction is completed, if approved by the Division as eligible changes. The recipient must provide to the Division a description of the change order cost and reason for the change order. Any approval of change orders shall be capped at the ATQA amount.

If at any time the requested financing amount exceeds the preliminary funding commitment amount by more than fifty (50) percent or the credit limit, whichever is less, the Project must receive re-approval of the preliminary funding commitment.

GG. Future Local Debt

1. The applicant's future debt may not be senior to CWSRF debt. The applicant's future local debt may be on parity with the CWSRF debt if the following conditions are met.

a. i. The applicant's non-subordinate debt is rated "A," or higher, by at least two nationally recognized rating agencies; or

- ii. The applicant is a disadvantaged community and the Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its non-subordinate debt; or
- iii. The applicant is a disadvantaged community and the Division determines that requiring future debt to be subordinate to the CWSRF debt will unduly restrict the agency from obtaining future system debt necessary for water quality improvements.

and

- b. The applicant's net revenues pledged to pay all senior debts relying on the pledged revenue source are at least 1.2 times the highest year's debt service and net revenues pledged to pay all debts are at least 1.1 times the highest year's debt service.

DH. Effective Date

The effective date of the financing agreement means the date specified as the beginning of the financing agreement. Eligible construction costs under the financing agreement may be incurred after this date. Construction or equipment procurement costs incurred prior to the FP&S effective date will not be eligible for CWSRF financing. This date will be the date of FP&S approval Preliminary Funding Commitment.

I. Expiration Date(s)

Financing Agreements may include appropriate expiration dates. Disbursements will stop if any of the expiration dates are not met. The Deputy Director or designee may approve up to a one hundred and twenty (120) day extension of a financing agreement expiration date for good cause. Applicants that miss an expiration date and do not receive approval of an extension must reapply for CWSRF funding per Section IX.

XIII. APPROVAL TO F AWARD (ATO A)

A. Equipment Procurement, Plans and Specifications, or Request for Proposals Approval

The primary focus of the review of the Equipment Procurement, Final Plans and Specifications (P&S), or Request for Proposals will be to determine if the equipment, design, or design-build proposal is consistent with the facilities described in the FPA ~~letter~~, if the proposed Project, in concept, will meet WDRs, and if it will comply with applicable federal and State CWSRF Program requirements. ~~The Final P&S must be approved by the Division and the applicant must agree to the eligibility determinations and performance certification standards prior to issuance of the financing agreement.~~

Applicants, at their option, may submit draft purchase orders, preliminary P&S, or the draft RFP for review if they would like an initial review prior to finalizing the purchase order, Project P&S, or RFP. Applicants may also request, at their option, a detailed review of the purchase order, P&S, or RFP by the Division with any comments forwarded to the applicants and their consultants.

B. Approval of Award Package and Amended Financing Agreement

Recipients ~~will be~~ required to submit an ATO A package to the Division for review and approval prior to awarding the disbursement of equipment procurement, construction, or design-build cost contracts. The Division will also review the ATO A request package to assure that both the recipient and its contractors or vendors have complied with the applicable requirements of this section, any conditions specified in the PFC, and that all permits, and approvals, and financing necessary to complete the project have been obtained.

~~MBE/WBE "Good Faith" effort requirements, if applicable. Appendix K contains the ATA Request Form, the MBE/WBE "Good Faith" Effort Certification and the MBE/WBE forms that must be submitted, if applicable, with the request to award the construction contract.~~

Neither the USEPA nor the State Water Board will be involved in resolving bid or contractual disputes. Bid or contract dispute resolution will be the sole responsibility of the recipient. The ATA amended financing agreement will not be issued until all bid and/or contract disputes have been resolved by the recipient.

The Division will use the ~~lowest acceptable~~ bid accepted by the applicant consistent with state contracting laws to determine the final eligible financing agreement amount. For Design-Build Projects, the financing agreement will be based on the Design-Build proposal selected by the recipient.

The Completion of Construction date will be ~~revised~~ established at the time of the ATA 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. The final Initiation of Operation date will be established in the same manner and starts the one-year Certification Period (see Section XI~~IV~~.B and Appendix ~~H~~J for more details).

Once the Completion of Construction date has been established in the amended financing agreement, the applicant must request any extensions of the Completion of Construction date in writing at least 90 days before the Completion of Construction date. The Division may approve an extension of the Completion of Construction date for good cause. If the Division does not receive a request for extension of the Completion of Construction date at least 90 days in advance, the Division shall not extend the Completion of Construction date.

~~Once~~ After the ATOA package has been ~~submitted and approved~~ reviewed and approved by the Division, ~~the Division prepares the Master File. After the Master File is determined to be complete~~ the Division will prepare an amendment to the financing agreement consistent with the credit review to include the Division's decisions on the AOA package and mail it to the recipient for signature. Signature of the amended agreement by the applicant's Authorized Representative will constitute agreement with the Division's decisions on the AOA. The applicant's Authorized Representative must sign the amended financing agreement acknowledging agreement with the Division's decisions on the AOA prior to disbursement of procurement, construction, or design-build costs.

1L. Design-Build Projects

Applicants requesting CWSRF assistance for Design-Build Projects will be required to complete both ~~a facilities planning~~ the "Approval of Construction Financing", process and a Design-Build selection process. The ~~planning~~ "Approval of Construction Financing" process will follow the ~~planning documentation~~ requirements described under Section IX above, and the Design-Build process will follow a two-phase selection process. The two-phase selection process is a procurement process, which includes the preparation of a Request for Design-Build Qualifications (RFQ) to pre-qualify the bidders and a Request for Design-Build Proposals (RFP) from the pre-qualified bidders. For additional information on implementation of the Design-Build process, it is recommended that the applicant refer to the RFQ/RFP Guide Section of the 'Design Build Manual of Practice' published by the Design Build Institute of America (DBIA) (Phone No. (202) 682-0110).

Before a RFP is issued, the applicant must complete a RFQ process. The applicant shall prepare RFQ documents for the selection of the most qualified Design-~~b~~Builders who have the greatest potential to design and build the proposed Project ~~and submit the documents to the Division for review and approval~~. In this document, the applicant must establish clear and objective standards or criteria which will be used to

determine the most qualified firms to be invited to prepare and submit a Design-Build bid proposal. Responses from Design-builders must be evaluated and Design-builders must be pre-qualified by the applicant before issuing a RFP.

Before the RFP is finalized, the applicant shall select a Design-Build Technical Review Panel (Panel) to review the RFP. See below for the Panel selection requirements. The RFP must provide enough information to clearly explain the Project objectives and the design intent. At a minimum, Project objectives, process treatment requirements (design criteria), unit processes, external constraints that apply to the Project, site definition, geotechnical investigations, process definition, performance requirements, permit requirements, and similar information needs to be provided. The minimum effort is similar to completion of a preliminary design that represents approximately 15 to 20 percent of the conventional design effort.

The Panel shall review the RFP to insure the Design-Build objectives and conditions, as discussed below, are described properly and accurately. Based on the results of the Panel's review, the RFP will be finalized. Only those Design-builders who are pre-qualified by the applicant will receive the RFP and only they may submit a Design-Build bid proposal. The RFP must provide a scope of work that is sufficiently detailed to allow pre-qualified bidders to produce cost-effective bid proposals. Also, criteria for selection of the successful bidder should be communicated clearly and structured such that the qualification-based bidding process is reinforced.

~~The final RFP shall be prepared and submitted to the Division along with a copy of the adopted Waste Discharge Requirements (WDRs) issued by the Regional Water Board. While early submittal is not a program requirement, the Division strongly recommends that applicants submit a draft RFP for review well in advance of soliciting bids. The final RFP shall be submitted to the Division for review and approval before advertising for bid proposals.~~

The applicant will evaluate the bid proposals and make the final selection of the bid proposal that provides the best value. Best value is determined by both qualitative factors (e.g., design solution, management and schedule) and proposed bid price in the evaluation and selection process. The Panel that was used to review the RFP will also review the applicant's evaluation of the bid proposals and make a recommendation to the applicant. If the applicant does not concur with the Panel's recommendation, the applicant must ~~provide the Division with the~~ justify overruling the Panel's recommendation. ~~The Division reserves the right to reject the applicant's selection if not fully justified. The final financing agreement and the Approval to Award (ATA) the Design-Build contract will be issued by the Division after the successful bidder is selected by the applicant and ATA must be obtained from the Division before initiating construction.~~

2M. Technical Review and Panel Selection Requirements for Design-Build Projects

The preparation of a RFP for all Design-Build Projects must be undertaken by CWSRF applicants with the assistance of individuals knowledgeable ~~about~~ public contracting requirements, and ~~with the help of~~ professionals experienced ~~in the application of the~~ with performance criteria appropriate to the facility's needs.

All CWSRF applicants for Design-Build Projects shall meet the following technical review and Panel selection requirements prior to the completion of preliminary (up to 20 percent) design.

a1. The proposed technical review effort should be completed in accordance with the RFQ/RFP Guide Section of the Design Build Manual of Practice published by the DBIA or equal.

b2. The technical review must insure that the RFP outlines: 1) the Design-~~b~~Builder selection criteria clearly; 2) details the Project description, Project objectives, design intent, design criteria, unit processes, responsibility/risk allocation, and submittal requirements; 3) includes the responsibilities of the owner, Design-~~b~~Builder, Design-~~b~~Builder's architect (including the engineer and other professionals); 4) specifies responsibility for performance, scheduling, permits, fees and insurance; 5) specifies liquidated damages (if any); 6) and addresses other construction related issues properly and accurately. In addition, the applicant's needs must be described precisely and in a manner that will be universally interpreted and understood.

c3. The applicant's consultant, or any company affiliated with the consultant, responsible for performing any portion of the Project design, assisting in preparation of the RFP, or performing the technical review of the RFP, is not permitted to participate on a team to bid on the Design-Build proposal.

d4. The applicant's consultant, or any company affiliated with the consultant, but responsible for performing only the Project planning, is permitted to bid on the Design-Build proposal.

e5. The applicant, and or consultant, or any company affiliated with the consultant, responsible for performing the Project planning, preparing preliminary design, or assisting in the preparation of the RFP, is not permitted to be the leader of the Panel or comprise more than twenty (20) percent of the Panel membership.

f6. The Panel leader will be selected by the applicant using a qualifications-based selection process (Cal. Govt. Code ~~Section~~§ 4525-4529).

~~It is highly recommended that a~~ Applicants may submit a Request for Proposal for Technical Review Services (Proposal) to the Division for review prior to soliciting Panel members. ~~This will eliminate the necessity to re-advertise if the Proposal or the Panel is found not acceptable by the Division. Once the Panel is selected, the applicant must submit the results to the Division for approval, including copies of the proposal, a description of the selection process, and the qualifications of the selected Panel members.~~

The cost of the technical review effort is eligible under included in the planning allowance described in Section XII.B.

Failure to complete a technical review effort, in accordance with the referenced DBIA manual, or equal, and the provisions stated above, will may result in the proposed Project being ineligible for CWSRF funding.

CB. Value Engineering (VE)

~~Applicants with estimated total Project construction costs greater than \$35 million must conduct a Value Engineering (VE) study. VE studies are not required, but also recommended for Projects costing less than \$35 million because of the potential cost savings and design improvements resulting from the VE process. An extra allowance amount will be provided for applicants conducting VE studies for Projects costing less than \$35 million. (See Appendix I Allowances).~~

The VE study report, if performed, shall be submitted with the Final P&SAOA. The VE study report shall describe all the VE recommendations. If any VE recommendations are not being implemented, the submittal shall discuss the reasons for rejection. ~~Applicants should consult with the Division's assigned Project Manager at the ten (10) percent design stage regarding VE requirements. (See CWSRF Guidance Memorandum No. 3, Appendix C).~~

For Design-Build Projects, irrespective of the Project cost, an independent technical review shall be conducted prior to the completion of the RFP. The RFP shall contain the results of the technical review and form the basis for the bidding documents. For information on conducting independent technical reviews, please see Section ~~XI.B.1~~. This technical review will replace the VE requirements that applied to normal design and construction Projects.

DC. Project Performance Standards

The performance standards for a Project shall be established during the design eligibility AOA package review, process, or during preparation of the Design-Build RFP. ~~During design review, the applicant and the Division will mutually agree on specific Project performance standards for CWSRF funded facilities.~~ At the end of the one-year Project performance certification period,

actual operating data must be compared with the Regional Water Board Waste Discharge Requirements and the Project performance standards.

Project performance standards may be established in one of two ways:

1. The Division will develop performance standards based on Division guidelines, or
2. The recipient may develop performance standards and submit them with the AOA package for Division approval.

Project performance standards shall be based on the Regional Water Board's Waste Discharge Requirements. The standards will describe data necessary for Project certification. For non-discharging Projects (such as I/I correction and pump stations), the Project performance standards include the elimination of overflows and reduction of I/I to the levels specified in a SSES.

~~The applicant and the Division will mutually agree on the Project performance standards before FP&S approval, or Design-Build RFP approval. The agreement on Project performance standards will be included as part of the financing agreement.~~ Further information on Project performance standards is included in Appendix HJ, Guidelines for Project Performance Certification.

ED. Compliance with State Statutes and Authorities Labor Wage Provisions

~~The recipient applicant's Authorized Representative must certify that the applicant has complied, or will comply, with all applicable State laws wage determinations. The FP&S will be reviewed to make sure the proper wage determination provisions have been inserted in the specifications.~~ The recipient will be responsible for assuring compliance with applicable ~~labor~~ State laws.

F. Compliance With Federal Statutes And Authorities

~~If the CEQA analysis per Section IX.B results in a Tier I determination, then recipients are will be required to comply with DBE and other applicable federal statutes and authorities shown in this section. If a CEQA analysis per Section IX.B results in a Tier II determination, then recipients will NOT be required to comply with DBE and other applicable federal statutes and authorities shown in Section XI.~~

1. Self-Certification

The applicant's Authorized Representative will be required to certify that the applicant has complied, or will comply, with all the federal authorities listed in Appendix K.

2. Minority-Disadvantaged Business Enterprise/Women's Business Enterprise (MDBE/WBE)

~~MBE/WBE is applicable only to Tier I Projects and does not apply for Tier II Projects (see Section IX.B).~~—The recipient must insert the following forms in its contract bidding documents: (1) Contract Provisions Relative to ~~MDBE/WBE~~; (2) ~~MDBE/WBE Self~~ Certification; and (3) Selected ~~MDBE/WBE~~ Subcontractors Form. A pre-bid conference with the prospective bidders is strongly encouraged to explain the ~~MDBE/WBE~~ “positive effort” requirement.

The recipient must submit six ~~MDBE/WBE~~ forms with the ~~ATO~~A request package. These are: (1) “Good Faith Effort” Solicitation listing; (2) “Good Faith Effort” Bids Received list; (3) Attachment A, Subcontractor Self Certification; (4) Attachment B, Selected ~~MDBE/WBE~~ Subcontractors (submitted with the bid); (5) Summary of Bids Received; and (6) the applicant’s ~~MDBE/WBE~~ Positive Effort Certification (see Appendix ~~I~~K, ~~MDBE/WBE~~ Compliance Guidelines).

If acceptable “Good Faith” effort~~s~~ ~~steps~~ have not been taken, the Division cannot ~~authorize-accept~~ the award of the construction contract. Selecting the next low, responsive, responsible bidder, or rebidding the contract, are acceptable alternatives for the recipient if CWSRF assistance is still desired. The financing agreement will be amended to reflect the costs of selection of the next low, responsive, responsible bidder or the low, responsive, responsible bidder after rebidding.

Recipients shall report ~~MDBE/WBE~~ utilization to the Division on the ~~MDBE/WBE~~ Utilization Report, State Water Board Form ~~MDBE/WBE~~ UR334 (See Appendix ~~J~~L). Reports must be submitted to the Division within ~~thirtyen~~ (~~+30~~) calendar days ~~followingof~~ the end of ~~the semiannual reporting period (April 30 and October 30)each federal fiscal quarter~~ until such time as the “Notice of Completion” is issued.

~~XI. — Compliance With Other Federal Statutes And Authorities~~

~~If the analysis per Section IX.B results in a Tier I determination then recipients will be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in this section. If a CEQA analysis per Section IX.B results in a Tier II determination, then recipients will NOT be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in Section XI.~~

~~Prior to issuance of the financing agreement~~AOA~~, applicants will be required to certify that they have complied, or will comply, with all the other federal authorities listed in Appendix M.~~

~~Recipients will be required to submit an ATA package to the Division for review prior to awarding the construction contracts. The Division will also review the ATA request package to assure that both the recipient and its contractors have complied with the MBE/WBE “Good Faith” effort requirements, if applicable. Appendix K contains the ATA Request Form, the MBE/WBE “Good Faith” Effort Certification and the~~

~~MBE/WBE forms that must be submitted, if applicable, with the request to award the construction contract.~~

~~Neither the USEPA nor the State Water Board will be involved in resolving bid disputes. Bid dispute resolution will be the sole responsibility of the recipient. The ATA will not be issued until all bid disputes have been resolved by the recipient.~~

~~The Division will use the lowest acceptable bid to determine the final eligible financing agreement amount. For Design-Build Projects, the financing agreement will be based on the Design-Build proposal selected by the recipient. The Completion of Construction date will be established at the time of the ATA for the purpose of determining the recipient's payment schedule. The date will be established by mutual agreement between the Division and the recipient. The Initiation of Operation date will be established in the same manner and starts the one-year Certification Period (see Section XVII.B and Appendix J for more details).~~

~~Once the ATA package has been submitted and approved by the Division, the Division prepares the Master File. After the Master File is determined to be complete the Division will prepare the financing agreement and mail it to the recipient for signature. The Executive Director, Deputy Director of the Division, or designee, is authorized to execute such agreements on behalf of the State Water Board.~~

~~The final financing agreement and the Approval of Award (AOA) the Design-Build contract will be issued by the Division after the successful bidder is selected by the applicant. AA must be the Division before of construction.~~

XIV. FINANCING AGREEMENT

A. Interest Rate and Service Charge

~~The Service Charge provides funding for administration of the CWSRF Program. These costs were previously funded by the federal grants the Program receives. Since these grants have been declining, though, the Legislature approved redirecting some of the interest earnings on financing agreements to administration of the Program to replace any funds not provided by the grants. The interest is reduced on financing agreements that include the Service Charge so that the overall payment is the same whether a Service Charge is applied or not.~~

~~The interest rate for CWSRF financing agreements shall be half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Master File is determined to be complete. If the bond rate is not a multiple of 0.1, then the Division will round up to the nearest 0.1 percent. Where a service charge is included in the financing, the combined interest and service charge shall be equivalent to half of the most recent general obligation bond rate obtained by the State Treasurer's Office, rounded up to the nearest 0.1 percent.~~

B. Cost Increases

~~After the financing agreement is executed, all Project changes that result in cost increases will be the responsibility of the recipient. Change order increases that are offset by change order decreases may be funded after the construction is completed, if approved by the Division as eligible changes. The recipient must provide to the Division a description of the change order cost and reason for the change order. Any approval of change orders shall be capped at the ATA amount.~~

~~If at any time the requested financing amount exceeds the preliminary funding commitment amount by more than fifty (50) percent or the credit limit, whichever is less, the Project must receive re-approval of the preliminary funding commitment.~~

~~C. Future Local Debt~~

~~1. The applicant's future debt may not be senior to CWSRF debt. The applicant's future local debt may be on parity with the CWSRF debt if the following conditions are met:~~

~~a. i. The applicant's non-subordinate debt is rated "A," or higher, by at least two nationally recognized rating agencies; or~~

~~ii. The applicant is a disadvantaged community and the Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its non-subordinate debt; or~~

~~iii. The applicant is a disadvantaged community and the Division determines that requiring future debt to be subordinate to the CWSRF debt will unduly restrict the agency from obtaining future system debt necessary for water quality improvements.~~

~~and~~

~~b. The applicant's net revenues pledged to pay all senior debts relying on the pledged revenue source are at least 1.2 times the highest year's debt service and net revenues pledged to pay all debts are at least 1.1 times the highest year's debt service.~~

~~D. Effective Date~~

~~The effective date of the financing agreement means the date specified as the beginning of the financing agreement. Eligible construction costs under the financing agreement may be incurred after this date. Construction costs incurred prior to the FP&S will not be eligible for CWSRF financing. This date will be the date of FP&S approval.~~

XIV. CONSTRUCTION DISBURSEMENTS

Disbursements to recipients will be subject to USEPA requirements and/or limitations. Requests for Disbursement may be submitted at any time after execution of the financing agreement. Costs submitted to the Division must be currently due and payable ~~to the Project construction contractors~~. It will not, however, be necessary for the recipient to have actually paid the costs before requesting Disbursements under the financing agreement.

A. Disbursement Requests

The recipient will ~~receive be sent~~ a copy of the Request for Disbursement form from the Division's Disbursement ~~unit staff~~ (See Appendix MP) ~~upon execution of~~with the financing agreement. The recipient will be responsible for completing columns C (Costs Incurred to Date) and E (Costs Claimed for Disbursement to Date). The recipient is also responsible for the certification of expenditures by the authorized representative. A copy of each processed Disbursement request will be sent to the recipient to show the amount disbursed by the Division. Specific instructions for requesting Disbursements are also included in Appendix MP.

B. ~~Allowance-Planning, Design, Value Engineering, Construction Management, and Administration (Soft Costs) Requests~~

~~A request for d~~Disbursement of the ~~planning, and design, value engineering, construction management, and administration costs allowances~~ can be ~~submitted made after~~as soon as the a financing agreement is executed. The total amount ~~(based on the applicant's request) for all the allowances~~ will also be shown on the Disbursement Request Form No. 260 sent to the recipient. Recipients must certify that ~~soft costs planning and design~~ work has been completed and that claimed costs were incurred. ~~Unless requested by the Division, it is not necessary to include i~~nvoices or other documentation acceptable to the Division must be submitted to for the substantiate disbursement of ~~the soft costs allowances~~. ~~However, recipients must keep records of all incurred costs claimed. The final allowance amounts will be based on the eligible low bid costs and will be included in the financing agreement.~~

C. ~~Construction Progress or Equipment Procurement~~ Disbursement Requests

The recipient will receive a completed copy of the State Water Board Construction Contractor Spreadsheet Form No. 259 ~~after with the an amended financing agreement~~ATA has been issued by the Division. Instructions for completing this form are in Appendix MP.

When requesting disbursement for construction or equipment procurement, the recipient must include a copy of the Construction Contractor's Pay Estimate or the vendor's invoice along with completed Form Nos. 259 and 260 (See Appendix MP for detailed instructions). The Contractor's Pay Estimate or vendor's invoice must be itemized by bid item or show a relationship

between the Contractor's Pay Estimate and the bid items or the original purchase order. The Contractor's Pay eEstimate must be signed by the contractor and the authorized representative.

The ~~allowance~~remaining soft costs will be paid during construction as costs are incurred. The soft costs will be reviewed and approved by the Division based on each applicant's project and documentation submitted supporting incurred soft costs.

Disbursement during construction will be based on the amount of money currently due and payable to the contractor or vendor for eligible bid construction or procurement items, plus soft costs incurred ~~for engineering and administration~~, minus any amounts previously ~~paid~~ disbursed by the Division.

The recipient should assure that adequate local funding is available to pay the contractor in case the disbursement is not processed before payment to the contractor is due.

~~D. Division Assistance~~

~~If you need assistance, or have any questions regarding submittal of a request for a disbursement, please contact the Disbursements Unit at (916) 341-5715.~~

D. Final Disbursement

The final disbursement request must be received by the Division no later than six months after the Completion of Construction date as stated in the financing agreement unless prior approval is granted by the Division. As a courtesy, the Division will normally send a reminder notice approximately three months before the final receipt date, but prompt submittal remains the responsibility of the recipient. If the final disbursement request is not received within six months of the Completion of Construction date in the financing agreement and prior approval has not been granted by the Division to submit the final disbursement request at a later time, then the undisbursed balance of the CWSRF financing agreement will be deobligated and made available for other projects.

XI.VI. CONSTRUCTION

A. Preconstruction Conference

The recipient should notify the Division as soon as the preconstruction conference with the construction contractor is scheduled. Division staff may choose to attend.

B. Construction Inspections

1. Interim Inspections

The Division may conduct interim inspections during construction.

2. Final Inspections

The Division may conduct a final construction inspection.

C. Status Reports

Recipients shall submit reports on the status of construction activities no less frequently than quarterly starting with the issuance of the Notice to Proceed to the contractor. At a minimum the reports will contain the following information:

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

XI.VII. OPERATION

A. Final Project Inspection

The Initiation of Operation date is the start of the one-year Project performance certification period. During the certification period, the Division will conduct a Final Project Inspection to determine if the treatment facilities are being maintained and operated satisfactorily, and are capable of meeting performance standards. The Division may choose not to perform a Final Project Inspection if one is unnecessary to evaluate the operation of the specific project, such as sewer collection systems with no pump stations. The Division shall conduct a Final Project Inspection if no construction inspection was performed. If a Final Project Inspection was performed, the Division will prepare a final project inspection report, which will identify areas of operational deficiencies, if they exist.

Recipients may be required to provide the Division a copy of the Operations and Process Control Manual within the first six months of operation. The Operations and Process Control Manual will be used to assist the Division with the final project inspection and review of the project performance certification.

B. Project Performance Report and Certification

One year after Initiation of Operation, the recipient is required to certify that the project meets the project performance standards and must submit a project performance report and certification. The project performance report should summarize the data collected during the one-year project performance period and discuss the project's current and future ability to meet the project performance standards. The project performance report should also address any items noted as deficient in the final project inspection report. The Division will approve the certification of the project, if appropriate, at the end of the one-year certification period. A detailed outline of the project performance report requirements and certification form for various types of projects can be obtained from the Division.

If the project cannot be certified, the recipient must prepare a corrective action report, which analyzes the project's inability to meet the project performance standards. The corrective action report must include an estimate of the nature, scope and cost of the corrective action, and a time schedule for meeting the project performance standards. The time schedule must include an estimated date by which the recipient will certify the project and submit a project performance report and certification. The Division will conduct follow-up inspections, as necessary, to monitor the recipient's progress towards meeting the project performance standards. The cost of the corrective action is not eligible for funding assistance.

If the recipient does not submit a project performance report which includes a signed certificate of performance, or a corrective action report, within fifteen (15) months of the Initiation of Operation date, the Division will stop processing any pending or future applications for new CWSRF funding or bond-funded grants and withhold Disbursements on any existing financial assistance that the recipient may have with the State Water Board until the project performance report and certification, or corrective action report, are submitted.

At the time of the first billing, the Division shall issue a notification and request for technical report pursuant to Water Code ~~s~~Section 13267, and may use any other legal means to obtain the project performance report and certificate or corrective action report from the recipient. Further information on project performance certification is included in Appendix ~~H~~J.

XVIII. RECORD KEEPING REQUIREMENTS

Recipients are required to maintain separate project accounts in accordance with generally accepted government accounting standards. More specifically, the following records must be maintained:

- Accounts accurately depicting amounts received and expended for the project, including all funds received from the CWSRF;
- Recipient's wastewater pProgram income data; and
- Total cost of the project, including allowance costs.

Invoices must be maintained for a period of at least three years after Planning Document(s) Approval Letter/Preliminary Funding Commitment for planning financing agreements, or submittal and acceptance of an affirmative Project Performance Certification for construction financing agreements. All other records must be kept for the life of the financing agreement.

XVIX. CONSTRUCTION PAYMENTS

Interest and service-other charges, if applicable, will accrue on all disbursements as of the date each disbursement is made. The Division will issue a revised payment schedule after the recipient submits an approvable final disbursement request.

The Division will prepare a payment schedule that includes:

- The interest rate, and service rate, and DAC Funding charge, if applicable;
- Accrued interest;
- Service or DAC Funding charges, if applicable;
- Amount of CWSRF funding;
- The final principal amount of the financing agreement including accrued interest, and service, and DAC Funding charge, if applicable; and
- A complete amortization table.

The first annual payment will be due one year following the Completion of Construction date, as set by the Division established in the amended financing agreement under Section XVIII. Loans and most 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, and service, and DAC Funding charges, if applicable. Extended ~~Term~~ Financing agreements will be completed may extend no ~~later~~ longer than thirty (30) years after Completion of Construction and are subject to conditions or restrictions as set forth in USEPA's approval (See Appendix G). As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the date each payment is due, but prompt payment remains the responsibility of the recipient. The recipient will have a ten-day grace period, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs

may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, and other costs incurred. Any such penalties collected will be deposited in the CWSRF account. Penalties assessed will not change the principal balance of the financing agreement. Such penalties will be treated as a separate receivable in addition to the annual payment due.

All payments are to be sent to:

CWSRF Accounting Office
Attention: CWSRF Program
Post Office Box 1888
Sacramento, CA 95812-1888

XVIIIX. BOARD RESERVATION OF AUTHORITY

Prior to the signing of any financing agreement, 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:

- Reducing the eligible funding amount for any project;
- Adjusting the terms for payment of the CWSRF assistance consistent with applicable statutes.

The Executive Director may waive the requirements of this Policy in order to comply with the American Recovery and Reinvestment Act of 2009. Any such action will be taken only in a manner consistent with applicable federal and State requirements and after any prospective recipient, adversely affected by the action, has had an opportunity to comment on the proposed action. The Deputy Director of the Division may update and amend the CWSRF Policy Appendices as necessary for administrative or procedural changes, not in conflict with the CWSRF Policy.

XVIIIXI. ELIGIBILITY DISPUTES

Approvals or actions taken under previous versions of this Policy remain valid. Approvals or actions after the date of this Policy amendment that conflict with approvals or actions taken under previous versions of this Policy shall be resolved by Division staff.

In the event that a Division Staff Decision is not acceptable, the applicant or recipient may appeal within 30 days to the Deputy Director of the Division or designee, for a final Division Decision. If the applicant or recipient is not satisfied by the final Division Decision, the applicant or recipient may appeal 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 all the State Water Board Members. Upon the motion of any State Water Board

Member, the State Water Board will undertake to 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.

These provisions do not pertain to disputes under an executed financing agreement. Such disputes shall be resolved in accordance with the disputes resolution provisions of the financing agreement.