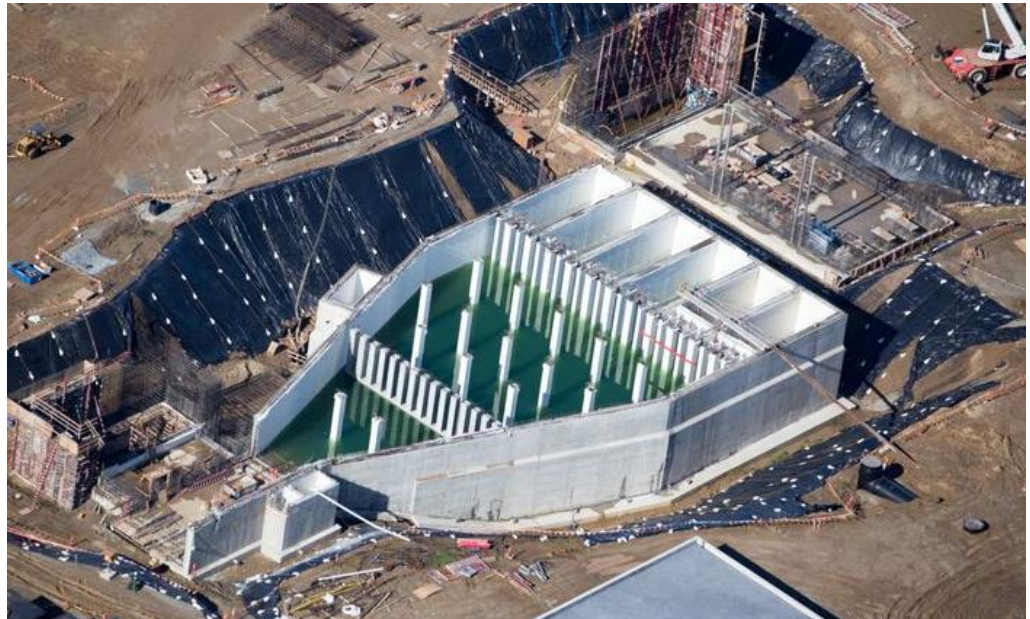


**STATE  
WATER  
RESOURCES  
CONTROL  
BOARD**



**CALIFORNIA  
ENVIRONMENTAL  
PROTECTION  
AGENCY**



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



Amended  
November 28, 2018

Prepared by:  
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD  
STATE OF CALIFORNIA

Amended November 28, 2018

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POLICY FOR IMPLEMENTING THE CLEAN WATER STATE REVOLVING FUND

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\*\*Complete Appendices are located at:

[https://www.waterboards.ca.gov/water\\_issues/programs/grants\\_loans/srf/cwsrf\\_policy.shtml](https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/cwsrf_policy.shtml)

## LIST OF ACRONYMS AND ABBREVIATIONS

AIS	American Iron and Steel
CEQA	California Environmental Quality Act
CWA	Clean Water Act
CWSRF	Clean Water State Revolving Fund
DAC	Disadvantaged Community
DBE	Disadvantaged Business Enterprise
DWR	Department of Water Resources
FSP	Fiscal Sustainability Plan
GAAP	Generally Accepted Accounting Principles
GASB	Governmental Accounting Standards Board
IUP	Intended Use Plan
MHI	Median Household Income
POTW	Publicly Owned Treatment Works
PRF	Pledged Revenues and Funds
SCG	Small Community Grant
SDAC	Severely Disadvantaged Community
SERP	State Environmental Review Process
USEPA	United States Environmental Protection Agency
WRFP	Water Recycling Funding Program

## **I. INTRODUCTION**

This Policy was written to implement the federal Clean Water Act's (CWA) Clean Water State Revolving Fund (CWSRF) Program in California. The CWA provides for the creation of a CWSRF Program capitalized by federal and state funds. The CWA authorizes financial assistance through loans and other financing mechanisms for a wide variety of pollution control efforts designed to meet the goals of the CWA. The CWSRF is intended to provide financial assistance in perpetuity using state and federal funds.

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

The provisions of this amended Policy are effective November 28, 2018, unless otherwise required by federal or state statute, guidance, regulation, or agreement.

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

## **II. PURPOSE AND OBJECTIVE**

Under federal and state law the primary purpose of the CWSRF Program is to provide financing for eligible projects to restore and maintain water quality in the state. This Policy is also designed to support multiple objectives where economically and technically feasible. These additional objectives must be cost-effective and complement both the federal and state criteria and the policy goals of the State Water Board.

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

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

## **III. DEFINITIONS**

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



“Agricultural Water Supplier” means a water supplier, pursuant to Section 10608.12 of the Water Code.

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

“Applicant” means the legal entity with the authority to enter into agreements and incur debt related to the Project. Eligible applicants for particular project types vary under applicable law, and are set forth in the Intended Use Plan (IUP).

“Authorized Representative” means the duly appointed member, official, or employee of the applicant/recipient who has the authority to represent the entity and sign documents pertaining to the funding or financing application, certify compliance with applicable state and federal laws, execute the financial assistance agreement and amendments, and certify disbursement requests.

“Bridge Financing” means interim financing to cover eligible project costs until the CWSRF financing for the project is received from the State Water Board.

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

“CEQA” means the California Environmental Quality Act (commencing at Section 21000 of the Public Resources Code).

“Clean Water Act” or “CWA” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), including any amendments thereto.

“Completion of Construction” means the date that construction or implementation of the project is substantially complete.

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

“Contingency” or “contingencies” means the amount budgeted for unforeseen costs. The contingency amount estimated in the CWSRF application can be used to pay for eligible change orders approved by the Division. Contingencies are subject to credit review and approval by the Division.

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

“Eligible Project Cost” means that portion of the total cost of a project that is eligible for financial assistance under this Policy pursuant to federal and state laws, rules, regulations, policies, and guidelines.

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

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

“Estuary project” means a project that implements a Comprehensive Conservation and Management Plan for Morro Bay, the San Francisco Bay, or Santa Monica Bay, in accordance with Section 320 of the federal CWA.

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

“Existing debt” means the applicant’s existing material debt (e.g. secured by the System revenues, etc.).

“Financial distress” or “financial emergency” means that a recipient has filed for bankruptcy protection in federal court or has taken either of the preliminary actions for bankruptcy protection pursuant to Section 53760 of the Government Code.

“Financing agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the recipient, setting forth the terms, provisions, and conditions governing the financing and repayment, if any. This document may be a Loan, Non-Repayable Financing, or another financing instrument.

“Fundable List” means a list of projects in the IUP that are expected to receive assistance in a particular state fiscal year. The Fundable List is prepared pursuant to Section 603(g) of the CWA.

“Infiltration” means groundwater entering a sewer system due to defective pipes, pipe joints, connections, manhole walls, or similar defects. Infiltration is distinct from inflow.

“Inflow” means the water entering a sewer system from roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, drainage, or similar sources. Inflow is distinct from infiltration.

“Intended Use Plan” or “IUP” means the annual document that the State Water Board submits to USEPA after public review and comment that contains the business plan for the CWSRF, identifies the projects eligible for funding during the year, and the terms and conditions applicable to funding.

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

“Nonpoint Source project” or “NPS project” means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture consistent with the NPS Implementation Plan.

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

“Operating Agreement” means the Operating Agreement between the California State Water Resources Control Board and the United States Environmental Protection Agency Region IX for Activities and Functions in Managing the State Water Pollution Control Revolving Fund Program, dated November 2012 and any amendments thereto. (See Appendix B).

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

“Project” means any distinguishable segment or segments, or portion of a segment, described in the approved financing agreement, which can be constructed or implemented separately, and for which financial assistance under this Policy is sought or provided.

“Recycled Water” is defined in Section 13050(n) of the Water Code.

“Recipient” means an applicant with an executed CWSRF financing agreement signed by all parties.

“Refinancing” means the use of CWSRF monies to pay off debt related to an otherwise eligible CWSRF project and provide CWSRF financing in its place.

“Regional Water Board” means the appropriate California Regional Water Quality Control Board.

“Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration or Inflow.

“SERP” means State Environmental Review Process approved by USEPA Region 9.

“Small Community Grant” or “SCG” means a grant authorized by Section 13477.6 of the Water Code.

“Small Disadvantaged Community” or “Small DAC” means a community with a population of less than 20,000, and either or both of the following conditions:

- an MHI of less than eighty percent (80%) of the statewide MHI;
- a sewer rate of more than four percent (4%) of the community’s MHI.

“Small Severely Disadvantaged Community” or “Small SDAC” means a community with both a population of less than 20,000 and an MHI of less than sixty percent (60%) of the statewide MHI.

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

“Storm water project” means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or groundwaters of the state and the reuse or disposal of storm water determined acceptable for reuse or disposal.

“Treatment facilities” or “treatment works” means “treatment works” as defined in Section 1292 of Title 33 of the United States Code.

“Urban Water Supplier” means a supplier, pursuant to Section 10617 of the Water Code.

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

#### **IV. PROGRAM MANAGEMENT**

##### **A. Intended Use Plan and Capitalization Grant Applications**

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

##### **B. Fundable List**

The purpose of the Fundable List is to identify Eligible Projects the State Water Board intends to finance during the state fiscal year.

1. Annual Fundable List in General
  - a. A project must be on the Fundable List to receive financing. Placement of an application on the Fundable List does not guarantee financing. A financing agreement will be executed for a project on the Fundable List only if the application meets all applicable eligibility requirements.
  - b. All projects<sup>1</sup> submitted to the Division for CWSRF and its complementary funding sources will be evaluated for placement on the Fundable List. Annually all applications, with the exception of small SDAC, small DAC, and public health<sup>2</sup> projects, will receive a priority score as described below in Section IV.B.2 of this Policy.

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<sup>1</sup> Multiple application forms submitted for financially separate but technically interrelated and interdependent segments of a project will be considered as one “project” for scoring purposes. Projects that (a) have completed 25% of construction on or before December 31 or (b) started construction on or before December 31 and are anticipated to complete construction before the earlier of June 15<sup>th</sup> or the adoption of the IUP are not fundable.

<sup>2</sup> A project is a public health project when the County Board of Supervisors, City Council, or the County Health Officer has certified that a health problem exists and the State Water Board or a Regional Water Board has (a) adopted a discharge prohibition, (b) approved a moratorium, or (c) adopted a cease and desist order. Alternatively, a project may be a public health project when it is required to comply with a prohibition, posting, limitation, or warning that has been imposed by a

- c. Small SDAC, small DAC, and public health projects are Fundable at any time provided they meet all eligibility requirements, and will automatically be added and remain on the Fundable List until:
  - i. The project is funded;
  - ii. The problem ceases to exist or the application is determined to be ineligible for funding;
  - iii. The State Water Board instructs that it be removed; or
  - iv. The applicant requests that its application be removed.

2. Priority Score

The priority score is the sum of three components: (a) the “primary score,” (b) the “secondary score,” and (c) the “readiness score.” Pro-rated scores will not be awarded for any components of the priority score.

a. Primary Score

- i. All applications subject to scoring will receive a primary score. The primary score is a single number selected from Table 1.
- ii. The primary score is selected using the combination of purpose and resource or impact that results in the highest primary score<sup>3</sup>. A description of each term in Table 1 is given below the table.
- iii. The maximum primary score is nine (9).
- iv. Applications that do not meet any of the objectives in Table 1 will receive a primary score of two (2).

**Table 1 – Primary Score**

Resource or Impact	Purpose		
	Corrective	Preventive	Improvement
Drinking Water Source	9	8	7
Delta Water Quality	8	7	7
Water Recycling			7
Impaired Water Body	8	6	4
Water Quality Control Plan or Permit	8	6	4

**Primary Score Descriptions**

Purpose

**Correcting:** To qualify as a corrective project, the applicant must identify the specific plan, policy, or permit criteria that are being violated or exceeded, document the extent of the violations, document that the violations are the subject of enforcement

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responsible health authority and the State Water Board or a Regional Water Board has concurred with the health authority’s determination and established a time schedule for correction or elimination of the problem. The applicant must demonstrate a direct connection between completion of the project and correction or elimination of the public health problem.

<sup>3</sup> For example, a water recycling project that also corrects an impairment would be scored as a “corrective” project in that category, receiving a Primary Score of “8.”

actions, if applicable, by a Regional Water Board or the State Water Board, and demonstrate a direct connection between completion of the project and correction of the problem.

Preventing: To qualify as a preventive project, an applicant must demonstrate that not completing the project is likely to result in a plan, policy, or permit violation or exceedance in the near future. The applicant must identify the specific criteria that will potentially be violated or exceeded and demonstrate a direct connection between completion of the project and prevention of the violations.

Improving: To qualify as an improvement project, an applicant must demonstrate that, while not necessary to meet current standards or prevent near-term violations, the project outcome will surpass current plan, policy, or permit requirements, meet anticipated future requirements, or be done to improve the efficiency and reliability of meeting standards or reduce operating costs.

### Resource or Impact

Drinking Water Source: The applicant must identify the drinking water source, the current or reasonably foreseeable users of that source, the drinking water standards that are in jeopardy, and demonstrate a direct connection between completion of the project and the elimination or reduction of the constituents that jeopardize the drinking water standards.

Delta Water Quality: Applicants must demonstrate a direct connection between completion of the project and a benefit to water quality in the Sacramento-San Joaquin delta estuary.

Water Recycling: Projects must meet the requirements of the *Water Recycling Funding Program Guidelines*.

Impaired Water Body: Applicants must identify the 303(d) listed water body, the specific impairment, and demonstrate a direct connection between completion of the project and correction, prevention, or improvement of the specific impairment.

Water Quality Control Plan, Policy, or Permit: Applicants must identify the specific criteria in the Regional Water Board or State Water Board adopted plan, policy, or permit and demonstrate a direct connection between completion of the project and correction, prevention, or improvement of the conditions affecting the criteria.

#### b. Secondary Score

- i. All projects subject to scoring will receive a secondary score.
- ii. The secondary score is the single highest number chosen from Table 2 based on the characteristics identified in the table.
- iii. The maximum secondary score is three (3).
- iv. If the application or applicant does not meet any of the secondary characteristics shown on Table 2, then the secondary score will be zero (0).

**Table 2 – Secondary Score**

Secondary Characteristic	Score
Applicant has adopted a “climate change” action plan or policy, and the plan or policy is applicable to the system being financed or the project will help implement the plan or policy actions.	3
Project addresses multiple water quality impairments, eliminates or reduces multiple sources of water pollution, or eliminates a discharge of waste regulated by a Regional Water Board or the State Water Board.	3
Project is cited in a multi-agency regional environmental management plan, increases the local supply of drinking water, or has multi-media environmental benefits.	2
The applicant agrees to provide funds to match federal capitalization grants by agreeing to the match financing option <sup>4</sup> .	2

**Secondary Score Descriptions**

Climate Action Plan or Policy: A plan or policy adopted or approved by the applicant that identifies a series of specific actions covering all aspects of the applicant’s authority that it intends to take to address the causes and effects of climate change or participation in a 3<sup>rd</sup> party voluntary program covering all aspects of the applicant’s authority that will help it identify, track, and verify actions to address the causes and effects of climate change.

Multi-Agency Regional Environmental Management Plan: A plan adopted or approved by multiple agencies that identifies regional solutions to environmental problems.

Multiple Environmental Benefits: Multiple environmental benefits are benefits in addition to the project’s primary water quality benefits, such as reducing solid waste or air pollution from sources outside of the system or project being financed.

c. Readiness Score

- i. All projects subject to scoring will receive a readiness score.
- ii. The readiness score will be based on the status of the application and the project’s plans and specifications as of December 31 of the year preceding the Fundable year.
- iii. The readiness score is the sum of the applicant’s readiness for an agreement and the applicant’s readiness to construct the project based on the thresholds identified in Table 3.
- iv. The maximum readiness score is four (4).
- v. If the application is incomplete, the agreement readiness score is 0 (zero). If the project’s plans and specifications do not meet either of the thresholds in Table 3, the construction readiness score will be 0 (zero).

<sup>4</sup> Applicants must commit to the match financing option at the time of scoring. Rejection of the match option at a later date may result in removal of the project from the Fundable List.

**Table 3 – Readiness Score**

Application or Design Status	Score
Complete Application <sup>5</sup> Received by the Division	2
Plans and Specifications <sup>6</sup> as verified by Division staff	If > 49% = 1, or if > 89% = 2

d. Adjustments

The projects' Priority Scores will not be adjusted during the Fundable year.

3. Development of the Annual Fundable List

- a. The Division will include all Small SDAC, Small DAC, and public health projects on the Fundable List. The Division will sort and rank all other projects from highest priority score to lowest priority score for potential placement on the Fundable List.
- b. The Division will select a cutoff score by comparing the demand for funds with the CWSRF Funding Target in the IUP and the available complementary funding sources.
  - i. All projects with a Priority Score higher than the cutoff score will be Fundable. Projects with a Priority Score equal to the cutoff score may be Fundable or not Fundable depending on the outcome of the process described in this subsection of the Policy. Projects below the cutoff score will not be Fundable.
  - ii. If a cutoff score results in a Fundable List less than 90% of the Funding Target, then a lower cutoff score will be selected.
  - iii. If a cutoff score results in a Fundable List greater than 125% of the Funding Target, then projects whose priority score is equal to the cutoff score will be evaluated separately for placement on the Fundable List based on the community economic status shown in Table 4 below. In addition, funding limitations may be applied to Fundable projects.
    - Projects with the same community economic status will either be Fundable or not be Fundable.
    - After determining the community economic status, all large severely disadvantaged and large disadvantaged communities will be Fundable provided the Fundable List is equal to or less than 125% of the Funding Target.

<sup>5</sup> A complete financial assistance application means that all four completed application packages (general, technical, financial, and environmental), with all applicable attachments, have been submitted to the Division.

<sup>6</sup> Release of a request for proposal for design-build or similar construction procurement will be counted as 100% P & S for purposes of the readiness score. For projects that do not require construction P & S, formulation of a complete scope of work will be counted as 50% P & S for purposes of the readiness score, and acquisition of all agreements and approvals necessary to implement the scope of work will be counted as 100% P & S for purposes of the readiness score.



- If the addition of all large severely disadvantaged and large disadvantaged communities results in a Fundable List greater than 125% of the Funding Target, then all large severely disadvantaged communities will be Fundable provided the Fundable List is equal to or less than 125% of the Funding Target.
  - If the addition of all large severely disadvantaged community projects would result in a Fundable List greater than 125% of the Funding Target or there are no large severely disadvantaged community projects, then the Division will consider funding all large disadvantaged community projects and the application of partial funding. Projects whose Priority Score is equal to or greater than the cutoff score may be subject to partial funding limitations. Any partial funding limitations will be determined so that the total funding on the Fundable List is consistent with the Funding Target and the availability of complementary financing sources. The Division will attempt to provide 100% of the requested financing to every project on the Fundable List to the greatest extent feasible, and will establish any funding limitations uniformly to those selected for partial funding. Projects approved for partial funding must demonstrate that the remaining funding is secured, or the Division must determine that it reasonably believes that the applicant is capable of obtaining the remaining funds necessary to successfully complete the projects or interrelated and interdependent phases of the projects. The funding limitations will not be adjusted during the Fundable year, but funding may be increased in a future IUP for projects that are limited in any given year.
- iv. Applications that are requesting only complementary financing sources, i.e., no CWSRF Loan funds, and a score below the cutoff score, may be included on the Fundable list if it appears that there will be complementary funds available after financing applications with the cutoff score or higher score.

**Table 4 – Community Economic Status**

<b>Status</b>
<p>Large disadvantaged community means a community with a population equal to or greater than 20,000 and one or both of the following conditions:</p> <ul style="list-style-type: none"> <li>○ a MHI of less than eighty percent (80%) of the statewide median household income</li> <li>○ a sewer rate of more than four percent (4%) of the community's MHI.</li> </ul>
<p>Large severely disadvantaged community means a community with both a population of equal to or greater than 20,000, and an MHI of less than sixty percent (60%) of the statewide MHI.</p>

- c. The Division may consider the application of partial funding to projects on the Fundable List or recommending a Fundable List greater than 125% of the Funding Target for good cause. The State Water Board reserves the right to modify the recommended Fundable List to provide for effective and equitable use of CWSRF funds. The Division will attempt to provide 100% of the requested financing to all projects on the Fundable List to the greatest extent feasible, and will apply partial funding limitations uniformly. Projects recommended for partial funding must demonstrate that the remaining funding is secured, or the Division must determine that it reasonably believes that the applicant is capable of obtaining the remaining funds necessary to successfully complete the projects or interrelated and interdependent phases of the projects. Any funding limitations approved by the State Water Board will not be adjusted during the Fundable year, but funding may be increased in a future IUP for projects that are limited in any given year.

#### 4. Funding of Projects

- a. All projects on the Fundable List are fundable at any time during the fiscal year covered by the IUP provided they meet all eligibility requirements. The Division will monitor progress of all projects on the Fundable List to ensure that applicants are proceeding expeditiously to construction or implementation.
  - i. Applications on the Fundable List that were incomplete as of December 31 will be subject to a secondary deadline for submitting a complete application to remain on the Fundable List.
  - ii. Applications whose plans and specifications are less than 20% as of December 31 may be subject to a secondary deadline for submitting substantially complete plans and specifications to remain on the Fundable List.
- b. The Division will review the applications on the Fundable List with the objective of executing agreements quickly and efficiently, giving priority to Small SDAC, Small DAC, and public health projects and priority to those communities with lower median household incomes, for all applications by the end of the state fiscal year. Projects on the Fundable List that are not financed by the end of the state fiscal year will be carried over to the next year's Fundable List unless directed otherwise by the State Water Board or an applicant withdraws its application.

#### 5. Project Removals

- a. The Deputy Director of the Division may remove a non- Small SDAC or a non- Small DAC project from the Fundable List if the applicant is non-responsive and the Deputy Director has notified the applicant and given the applicant a reasonable opportunity to respond.

- b. The Deputy Director of the Division will remove a project from the Fundable List when:
  - i. The problem ceases to exist or the application is determined to be ineligible for funding;
  - ii. An applicant retracts its commitment to the match financing option if scoring for the match option was decisive to placement of the application on the Fundable List;
  - iii. The applicant fails to meet a secondary deadline for submitting a complete application or substantially complete plans and specifications;
  - iv. The State Water Board instructs that it be removed; or
  - v. The applicant requests that its application be removed.
- c. Projects that were removed from the Fundable List for any reason may be placed on a future year's Fundable List if the Policy requirements for placement have been satisfied.

#### C. Interest Rate and Other Charges

1. Generally, the interest rate for CWSRF financing agreements is fifty percent (50%) of the most recent interest rate paid by the State on general obligation bonds issued by the State Treasurer's Office as of the date that the Division initiates preparation of the financing agreement document for routing and signoff or the State Water Board approves the financing, whichever is first, rounded up to the nearest ten basis points (0.1%).
2. The State Water Board will utilize the IUP to establish any administrative service charge, Small Community Grant (SCG) funding charge, financing charges, and incentives. The administrative service charge provides funding for administration of the CWSRF Program, and the SCG funding charge provides a source of grant funding for small SDAC and small DAC wastewater projects. Where a financing agreement includes any such charge, the interest is correspondingly reduced so that the combined payment of principal, interest, and charge(s) is the same regardless of whether a charge is applied.

#### D. Annual Report

The Division will prepare and send an Annual Report to the USEPA that describes how the CWSRF Program met the objectives identified in the year's IUP and appropriate additional periodic reporting requirements. The Division will promptly post the Annual Report on its internet website.

### V. **MATCH FINANCING**

The State must contribute capital into the CWSRF equal to twenty percent (20%) of the federal Capitalization Grants. The State Water Board may offer incentivized financing (e.g., a reduced interest rate) to applicants that contribute matching funds through their financing agreements.

## A. Availability

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

## B. Match Resolution

To receive match financing an applicant must submit a resolution passed by the applicant's governing body that sets forth the applicant's intent to provide matching funds in the amount and at the times necessary to complete the project. Appendix C contains a model resolution.

## C. Match Financing Terms

The interest rate on match financing agreements will be zero percent (0%). The principal amount of the financing agreement will include both the amount received from the State Water Board and the matching funds contributed by the recipient. Planning and design financing agreements may not use match financing. Match Financing may not be combined with other interest rate reduction incentives.

## D. Match Disbursements

### 1. Eligible Project Costs

The recipient must pay the proportionate match for each eligible project cost (16.67 percent), and may request the remainder of each eligible project cost (83.33 percent of the financed amount) from the CWSRF.

### 2. Match Certification and Documentation

The recipient must submit to the Division certification of payments for all eligible project costs. The Division will disburse 83.33% of the eligible project costs, provided the recipient has certified that all past disbursements have been paid to the consultants, contractors or vendors and submitted copies of the canceled checks or other documentation of payment acceptable to the Division, on a quarterly basis, documenting payment of CWSRF funds disbursed from the CWSRF and the match amounts to the consultants, contractors or vendors.

## **VI. REFINANCING AND RESTRUCTURING**

### A. Existing Small DAC and small SDAC Debt

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

a. The applicant is a Small DAC or small SDAC;

- b. The applicant's debt was incurred for an Eligible Project.
  - c. The existing debt(s) were the result of external and non-CWSRF borrowing by the applicant;
  - d. Refinancing the debt is necessary to complete a new Eligible Project at a payment that is affordable for the Small DAC, or small SDAC; and
  - e. The Division has identified sufficient available funds for this purpose.
2. To be eligible for refinancing, projects that include work completed on or after October 30, 2009, must comply with Davis Bacon requirements, at least for the portion of construction work completed on or after October 30, 2009. (See *Appendix N.*)
  3. To be eligible for refinancing, projects that include work completed on or after June 10, 2014, must comply with American Iron and Steel (AIS) requirements, at least for the portion of construction work completed on or after June 10, 2014. (See *Appendix N.*)

**B. Restructuring for Financially Distressed Recipients**

The Division may restructure existing CWSRF loans for financial distress or financial emergencies

**VII. WATER RECYCLING AND SMALL DAC/SDAC PROJECTS**

The State Water Board generally funds Small DAC and Small SDAC wastewater and water recycling projects in accordance with this Policy and the IUP.

- A. Where funding for these projects is not derived from, dependent upon, or bundled with CWSRF monies, the Deputy Director may waive federal CWSRF pass-through requirements, as appropriate.
- B. Water recycling projects serve water supply needs. The State Water Board will fund water recycling projects in accordance with this Policy and the requirements of the Water Recycling Funding Program (WRFP) Guidelines. Incentives available to these projects, including Non-Repayable Financing or reduced interest rates, will be described in the CWSRF IUP.
- C. The State Water Board will fund Small DAC and Small SDAC wastewater projects in accordance with this Policy. Incentives available to these projects, including non-repayable financing and reduced interest rates, will be described in the CWSRF IUP.

**VIII. PLANNING/DESIGN FINANCING**

Planning and design costs are eligible for reimbursement as part of a project financing agreement if not previously financed. However, applicants also have the

option to apply for separate planning, design, or planning and design financing for a project. Approval of planning/design financing does not obligate the State Water Board to provide subsequent project financing.

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

#### A. Planning/Design Application Requirements

If the applicant intends to restructure the planning/design financing as part of a CWSRF project financing agreement, then the Plan of Study must ensure development of all documents necessary for project financing approval. The Division will apply the Credit/Financial Guidelines in the review of each planning/design financing application or request for securing additional debt (see Appendix N).

1. The application for planning/design financing must include the following:

a. Technical information:

i. A Plan of Study that includes the following components:

(A) Description of water quality problem(s) to be addressed (including information about existing or pending enforcement actions);

(B) Scope of Work that considers the following:

1. Budget;

2. Schedule (including deliverables and submittal dates); and

3. If the Plan of Study includes design work, it should explain the status of planning work. The Division may request to review existing planning documents prior to approving design financing.

ii. Water Rights (See Section IX.B.2.a.i of this Policy for requirements.)

iii. Water Management (See Sections IX.B.2.d of this Policy for requirements.)

b. Financial information:

i. The applicant must submit a resolution or ordinance adopted by its governing board authorizing submittal of the application and designating an Authorized Representative by title as signatory to all relevant financing documents and supporting materials and certifications.

- ii. The applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of the parties.
- iii. The applicant must provide the correct name of its proposed pledged revenue source and related enterprise fund to the Division (e.g., Wastewater Revenues and Wastewater Enterprise Fund).
- iv. The applicant must provide three (3) years of financial statements, preferably audited. The financial statements may include the current year (if available), and the two (2) previous years, or three (3) previous years if the current year has not been completed.
  - (A) The applicant must identify any restricted funds and the reason for such restrictions.
  - (B) If the system is privately owned, and lacks audited financial statements, the applicant must provide tax returns involving the system for the most recent three (3) years. The applicant's submitted information will not be deemed confidential.
  - (C) The applicant must provide any adopted budget for future year(s) and a projected budget through first payment. Budget projections may include proposed taxes, assessments, and/or fee or service charges (as applicable).
- v. Where the applicant is a local government, it must submit a copy of its debt management policy.
- vi. The applicant must describe any issues related to its proposed planning/design financing, including but not limited to contractual or ratepayer/taxpayer disputes, pending litigation, audit findings (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity), disputes, or property right issues associated with the proposed project.
- viii. Existing debt:
  - (A) The applicant must submit a schedule of all material debt, both short-term and long-term. This includes debt that reflects an obligation relying on the same revenue as the planning and design financing, and debt that is otherwise material to the transaction.
  - (B) The applicant must submit a copy of each material debt document (e.g., indenture, installment agreement, loan, note, etc.) and credit instrument (e.g., swaps, hedges, etc.). Where the relevant debt is a bond series, the applicant must submit both the Official

Statement and the underlying debt document (e.g., indenture, pledge resolution, etc.).

- (C) If the applicant has no material debt, the applicant's Authorized Representative must certify this.
- (D) The applicant must identify any conditions in material debt obligations that must be satisfied prior to executing the financing agreement.
- (E) The applicant must identify any debt limit to which it is subject.

c. Coverage

- i. The applicant must comply with existing coverage covenants or with CWSRF coverage requirements, whichever covenants or requirements provide greater coverage. The Division will employ appropriate credit criteria to evaluating all pledged sources of repayment.

- (A) The recipient's pledged source of repayment for the Loan, in any fiscal year following the fiscal year in which the project is completed and until the Loan is repaid, must be at least the sum total of (a) 1.2 times the total senior ( $D^{\text{senior}}$ ) and parity ( $D^{\text{parity}}$ ) annual debt service payable from the pledged sources and (b) 1.0 times the subordinate ( $D^{\text{subordinate}}$ ) annual debt service payable from the pledged sources, as reflected in the following formula, unless the Division determines that credit considerations allow a different debt service coverage requirement:

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

- (B) The applicant may pledge revenues, assessments and/or special taxes.
- (C) The Division may apply to the CWSRF transaction the additional debt test and rate covenant as set forth in an applicant's existing master trust indenture or similar debt document (see Appendix N, Section B).

d. Additional Debt

Additional debt will be evaluated in accordance with Appendix N.

e. Proposed Loan Security/PRF:

- i. This is not required if the applicant is a Small DAC or Small SDAC applying and eligible for one hundred percent grant or principal forgiveness funding.



- ii. A PRF may be a special tax, user fees, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens.
- iii. If using real property, the applicant must provide at least two appraisals of the value, how the value was determined, and whether the property is currently pledged as security on any other debt.
- iv. An applicant that is not a public agency must document its authority to bind itself to the financing agreement and pledge the relevant revenues.

#### B. Eligible Planning/Design Costs

- 1. Costs that were incurred by the applicant may be reimbursed provided all applicable state and federal requirements have been met by the applicant. If the applicant incurs planning and design costs before execution of the agreement, it does so at its own risk.
- 2. Eligible costs include the preparation of planning/design documents, including, but not limited to:
  - a. Feasibility studies and project reports
  - b. Plans and specifications
  - c. Financial analyses
  - d. Value engineering
  - e. Environmental documents
  - f. Capital improvement plans
  - g. Water conservation plans
  - h. Sewer system evaluation/surveys
  - i. Environmental management systems
  - j. Asset management systems
  - k. Reasonable administrative and legal costs associated with land acquisition (actual land acquisition is not eligible as a planning/design cost)
  - l. Water audits
  - m. Energy audits
  - n. Fiscal sustainability plans

- o. Costs related to Proposition 218 proceedings

- 3. Ineligible Costs

- a. Construction management costs

- b. Administration costs associated with construction/implementation

- C. Planning/Design Financing Terms

- 1. Interest

- For Small SDACs and Small DACs, the interest rate shall be zero (0) percent. For all other applicants, the interest rate shall be fifty percent (50%) of the most recent interest rate paid by the State on general obligation bonds issued by the State Treasurer's Office as of the date the Division initiates preparation of the financing agreement document for routing and signoff or the State Water Board approves the financing, whichever is first, rounded up to the nearest ten basis points (0.1%).

- 2. Amortization

- Repayments will be amortized by equal annual payments over five or ten years, whichever the applicant selects, unless restructured. The first annual payment will be due no later than one year following the completion of planning/design. As a courtesy, the Division will issue a revised payment schedule after the recipient submits an acceptable final disbursement request. All payments must be sent to the address referenced in Section XIV.E of this Policy. The grace period on the payment is specified in Section XIV.D.2 of this Policy.

- 3. Restructured Planning/Design Financing

- The balance of a planning/design financing agreement may be restructured as part of executing a project financing agreement. The balance of the planning/design financing agreement will carry the financing terms applicable to the project's financing agreement. Interest will accrue on the planning/design financing balance based upon execution of the project financing agreement per the terms of the project financing agreement.

- D. Planning/Design Financing Approval and Agreement

- 1. An application must be on the Fundable List to receive planning/design financing. For routine, noncontroversial applications, the Executive Director, Deputy Director, or designee, of the Division may approve and execute planning/design financing agreements. Non-routine or controversial applications will be considered by the State Water Board at a State Water Board meeting.

2. Upon review and approval of required documents, the Division will prepare a financing agreement for execution.
3. At closing, the applicant will generally be expected to submit an opinion satisfactory to the Division's counsel from its general counsel and, if relevant, its bond counsel, substantially similar to the templates in Appendix Q.
4. For loans, the applicant will be expected to submit a closing resolution authorizing the transaction.

#### E. Planning/Design Financing Disbursements

1. The Division will not disburse funds until after the financing agreement is executed, and any disbursements are entirely conditioned on such execution. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements. Appendix F contains specific instructions for requesting disbursements.
2. The recipient must submit all draft deliverables prior to disbursement beyond 70 percent of the financing amount, and it must submit all final deliverables to the Division prior to disbursement beyond 90 percent of the financing amount.
  - a. If the recipient intends to restructure the planning/design agreement as part of a CWSRF project financing agreement, approval of the project financing will constitute Division acceptance of the final deliverables.
  - b. For short term financings for the preparation of planning/design documents not restructured as part of a project agreement, the Division will issue a letter accepting completion of the original scope of work, as appropriate.
3. The Division must receive the final disbursement request promptly after completion of planning/design. As a courtesy, the Division will normally send a reminder notice approximately three (3) months before the agreement's scheduled completion of planning/design, but prompt submittal of the final disbursement request remains the responsibility of the recipient. If the Division does not receive the final disbursement request within six (6) months of the planning/design completion date, it may deobligate the undisbursed balance of the planning/design financing agreement.

### **IX. PROJECT FINANCING**

An applicant must submit all documents identified by the Division in the application forms to obtain financing under this section, unless otherwise authorized by the Deputy Director of the Division for good cause. The Division may require that the applicant submit additional information or certifications necessary or useful to ensure that the financing complies with state and federal requirements. *Appendix G* contains the application for project construction/implementation financing. Eligible project types will be reflected in the current year's IUP, and generally conform to the list of

eligible projects set forth in the CWA. (33 U.S.C. § 1383). Applicants should contact the Division for assistance with eligibility determinations.

#### A. General

1. The application is organized into four packages: (1) general information, (2) technical, (3) environmental, and (4) financial security.
2. To expedite financing, the Division will assist applicants with completing certain program requirements during the application review. The Division may also offer limited assistance to qualified applicants to bolster the administrative and managerial capacity of those applicants.
3. To assist repeat applicants with financing long-term capital needs, the Division will work with them to update and maintain on-file reports/plans/documents that fulfill the requirements of this Section to minimize the resubmission of information needed to complete the requirements of this section.

#### B. Application Requirements

##### 1. General Information Package

- a. This package includes basic applicant and project information needed by the Division to process the application, and information to assist in completing the priority scoring process.

##### 2. Technical Package

- a. This package includes information and certifications necessary to evaluate the technical feasibility of the project, its ability to meet applicable water quality standards, objectives, or permit requirements, and compliance with applicable state and federal program requirements.

##### b. Water Rights

- i. Section 5103 of the Water Code requires water diverters to submit records of water diversions to the State Water Board's Division of Water Rights. If the applicant is not current on these submittals, the Division will not execute a financing agreement or disburse any funds until the reports are submitted unless the Deputy Director determines that (a) the CWSRF financing will assist the applicant in complying with the reporting requirements, and (b) the applicant has submitted to the State Water Board a one-year schedule for complying with the reporting requirement.
- ii. The applicant must provide information to allow the Division to determine whether a petition for change must be filed and approved with the State Water Board's Division of Water Rights for the project.

c. Project Report and Technical Certifications

- i. The applicant must submit a project report, or its equivalent, that contains the information outlined in Appendix G, as appropriate to the project. Engineering reports must be signed and stamped by a registered Professional Engineer. The contents of the report outlined in *Appendix G* are not prescriptive, but are intended to provide Division staff with sufficient information to evaluate whether the project is eligible for CWSRF financing, meets applicable technical requirements, and is likely to meet applicable water quality objectives and standards. Division staff may require the applicant to submit additional information to assess the project's ability to meet water quality objectives or plans.
- ii. For all applications, the applicant shall develop and implement a fiscal sustainability plan (FSP), or its equivalent, or its Authorized Representative shall certify that it has developed and implemented such a plan. The FSP will at a minimum include:
  - (A) an inventory of critical assets that are a part of the treatment works;
  - (B) an evaluation of the condition and performance of inventoried assets or asset groupings;
  - (C) a certification that the recipient has evaluated and will be implementing water and energy conservation efforts, to the maximum extent practicable, as part of the plan; and
  - (D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.
- iii. For all applications, the applicant shall certify that they have:
  - (A) studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and
  - (B) selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:
    1. the cost of constructing the project or activity;
    2. the cost of operating and maintaining the project or activity over the life of the project or activity; and
    3. the cost of replacing the project or activity.

d. Water Conservation and Water Management

- i. If the applicant is a water supplier, the State Water Board will not execute a financing agreement until the applicant has certified that it has complied with the provisions of Division 6 of the Water Code applicable to the applicant.
- ii. If the applicant is not a water supplier, the State Water Board will not execute a financing agreement until the applicant has verified to the satisfaction of the Deputy Director of the Division that the water suppliers in its service or project area have complied with the provisions of Division 6 of the Water Code applicable to the area's water suppliers.
- iii. Water Metering

The State Water Board will not execute a financing agreement until the applicant has certified that it has complied with the water metering requirements of Section 529.5 of the Water Code or that the water metering requirements are not applicable to the applicant.

e. General Plans

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

3. Environmental Package

- a. This package includes information and documentation necessary to evaluate applicable state and federal environmental requirements.
- b. The applicants must provide complete and adequate project specific environmental documentation to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and

to meet federal environmental review requirements. In accordance with the Operating Agreement, the State Water Board uses the State Environmental Review Process (SERP) to fulfill these requirements. (See Appendix I.)

#### 4. Financial Security Package

- a. This package includes information and certifications necessary to evaluate the financial security of the applicant and the proposed financing agreement.
- b. General Requirements
  - i. The Division will review the financial security documents to determine the applicant's credit capacity.
  - ii. The Division will apply the Credit/Financial Guidelines in the review of each Financial Security Package or request for securing additional debt (see Appendix N).
  - iii. If the applicant's finances cannot support the funding request, Division staff will work with the applicant to find a way to finance the project(s), if feasible.
- c. Coverage and Reserve
  - i. The applicant will normally be expected to establish and maintain, until the financing agreement is repaid in full, a restricted reserve equal to one year's debt service from available cash prior to the construction completion date, unless the Division determines that credit or tax considerations support a different result.
  - ii. The applicant must comply with existing coverage covenants or with CWSRF coverage requirements, whichever covenants or requirements provide greater coverage. The Division will employ appropriate credit criteria to evaluating all pledged sources of repayment.
    - (A) The recipient's pledged source of repayment for the Loan, in any fiscal year following the fiscal year in which the project is completed and until the Loan is repaid, must be at least the sum total of (a) 1.2 times the total senior ( $D^{\text{senior}}$ ) and parity ( $D^{\text{parity}}$ ) annual debt service payable from the pledged sources and (b) 1.0 times the subordinate ( $D^{\text{subordinate}}$ ) annual debt service payable from the pledged sources, as reflected in the following formula, unless the Division determines that credit considerations allow a different debt service coverage requirement:

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

- (B) The applicant may include in its pledge revenues, assessments and/or special taxes.
- (C) The Division may apply to the CWSRF transaction the additional debt test and rate covenant as set forth in an applicant's existing master trust or similar debt document. (See Appendix N, Section B).

d. Additional Debt

- i. The State Water Board normally expects the CWSRF debt obligation's lien status to be on parity with the applicant's senior/first tier lien debt obligations, unless the Division determines that credit considerations support a lower lien status.
- ii. Additional obligations secured by pledged sources of repayment may be senior to CWSRF obligations under the following conditions:
  - (A) The CWSRF agreement provides for 100 percent forgiveness of principal; or
  - (B) The senior obligation(s) predates the CWSRF obligation, the applicant meets the coverage requirements of this Policy, and the Deputy Director of the Division determines that such additional obligation(s) will not negatively affect existing or proposed CWSRF bonds; or
  - (C) The senior obligation meets the conditions set forth in paragraph iii of this section.
- iii. The applicant may refund debt with new debt if all of the following conditions are met:
  - (A) The new debt refunds or refinances existing debt with the same lien position as that existing debt;
  - (B) The new debt has the same or earlier repayment term as the refunded debt;
  - (C) The new debt service is the same or lower than the existing debt service; and
  - (D) The new debt will not diminish the applicant's ability to repay its CWSRF obligation(s).
- iv. Additional obligations that meet the coverage requirements of this Policy and secured by the PRF may be on parity with the CWSRF obligations.
- v. Assessment-backed financing should be a closed lien pledge. No additional debt subsequent to the CWSRF financing will be permitted to



be secured against the assessment except for refunding consistent with this Section of this Policy.

- vi. Special tax-based financing will require the Division's consent for additional debt.
- e. Proposed Loan Security/Pledged Revenues and Funds (PRF)
  - i. This item is not required if the applicant is a Small DAC or Small SDAC applying for one hundred percent grant or principal forgiveness funding.
  - ii. The applicant must identify all sources of security to be pledged.
  - iii. If using real property, the applicant must provide at least two appraisals of the value, indicate how the value was determined, and indicate whether the property is currently pledged as security on any other debt.
  - iv. A PRF may be a special tax, user fees, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens. Typically, assessment-backed financing will be combined with a revenue pledge.
  - v. An applicant that is not a public agency must document its authority to bind itself to the financing agreement and pledge the relevant revenues. It must also submit draft documents in support of filing a Uniform Commercial Code (UCC) lien with the Secretary of State.
- f. Existing Debt
  - i. If the applicant has no other material debt, the Agency's Authorized Representative must verify this.
  - ii. The applicant must submit a schedule of all material debt (e.g. secured by the PRF or the System), along with a copy of each relevant debt document (e.g. indenture, official statement, installment agreement, loan, or note, etc.).
- g. Debt Management Policy

Where the applicant is a local government, it must submit a copy of its debt management policy.
- h. Future Capital Needs

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

i. Financial Statements and Budget

- i. The applicant must provide (3) three years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or three previous years if the current year is not yet completed. If the system is privately owned, and lacks audited financial statements, the applicant must provide tax returns involving the system for the most recent three (3) years.
- ii. The applicant must identify any restricted funds and the reason for the restrictions.
- iii. The applicant must provide any adopted budget for future year(s) and a projected budget through first payment. Budget projections may include proposed taxes, assessments, and/or fee or service charges (as applicable).

j. Tax Questionnaire and Reimbursement Resolution

All public agency applicants must provide certain information for the State Water Board's tax counsel to assess the applicant's ability to receive CWSRF funds from tax-exempt revenue bond proceeds. While the reimbursement resolution establishes a potential date for reimbursement, the actual date and limitations for eligible construction costs will be stated in the financing agreement.

k. Applicant Resolution(s)/Ordinances

The applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a financing agreement signatory. The applicant must submit a reimbursement resolution meeting the reimbursement requirements for compliance with federal tax laws.

l. Material events, existing debt, and debt limits

- i. The applicant must submit information regarding current, prior, or pending material events (bankruptcy, defaults, litigation, grand jury findings/indictments).
- ii. The applicant must identify any conditions in material debt obligations that must be satisfied prior to executing the CWSRF financing agreement.
- iii. The applicant must identify any debt limit to which it is subject.

m. Relevant service, management, operating, or joint powers agreements

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

### C. Eligibility

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

#### 1. Eligible Project Costs

- a. Treatment facilities, including new collection systems and replacement of private laterals to serve existing homes or businesses or new development in infill areas within the existing service area, alternative treatment facilities such as leach fields, mound systems, and constructed wetlands, and equipment or systems to reduce energy use or reduce the effects of climate change.
- b. For treatment works projects, the leasing and fee-simple purchase of land necessary for construction. This includes surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible projects, and land integral to the treatment process (e.g., land for effluent storage, effluent application, recharge basins, or for sludge disposal). The State Water Board may be recorded as first lienholder on the deed of trust, and the Division may release the lien when no longer necessary to satisfy the project's objectives.
- c. Pre-purchased material and equipment used in the project and purchased in accordance with state and federal law;
- d. Reserve capacity for treatment works per Section IX.D.1 below;
- e. Administration, maintenance, and laboratory building space directly related to the operation of the eligible project;
- f. Process control systems;
- g. Mitigation measures mandated by state and/or federal agencies;
- h. Contingency for change orders approved by the Division for increased costs provided the costs are eligible, consistent with the original scope of the project and the credit review. The contingency amount will be included in the financing agreement.

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

- iii. Efficient landscape irrigation equipment;
- iv. Public water conservation education programs<sup>7</sup>, and
- v. Gray water systems

t. Non-Treatment Works Projects

- i. Construction of facilities to treat, reduce, or prevent NPS or point source pollution not required or specified by a National Pollution Discharge Elimination System permit, including reimbursement of planning, design, and environmental documents, project administration, and construction management for facilities construction;
- ii. Costs necessary to implement nonstructural components of water quality control projects;
- iii. Purchase of land or interests in land necessary for the project or for the purposes of protecting or preserving beneficial uses, including necessary mitigation measures and project implementation;
- iv. Demonstration projects;
- v. Education and outreach programs<sup>8</sup>; and
- vi. Project performance monitoring.

2. Ineligible Costs

- a. New collection systems not serving existing homes and businesses unless the new collection system serves an infill project within an existing service area.
- b. Honoraria;
- c. Engineering costs included as part of the construction bid for other than design-build projects;
- d. Decorative items (art work, sculptures, reflective ponds, fountains.);
- e. Non-wastewater solids facilities solely devoted to pasteurization, co-generation, conditioning, heat drying, thermal reduction, packaging, or distribution biosolids;
- f. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
- g. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;

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<sup>7</sup> Public water education conservation programs may be eligible on a case-by-case basis.

<sup>8</sup> Education and outreach programs may be eligible on a case-by-case basis.

- h. All other items not included in the construction contract except allowances;
- i. Overhead unrelated to the project;
- j. Replacement of facilities previously funded by Clean Water grants or CWSRF financing except under one of the following circumstances:
  - i. Where upgrading treatment systems or technology is necessary to achieve the Regional Water Board-mandated level of treatment and the replacement of previously funded facilities is necessary to achieve the mandated enhanced level of treatment;
  - ii. Where the facility or portion of the facility can no longer provide reliable service because it has reached the end of its useful life;
  - iii. Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable or cost-effective operation of the facility; or
  - iv. Where a proposed water recycling project:
    - (A) Meets the definition of an eligible water recycling project pursuant to current WRFPP Guidelines; and
    - (B) Requires the replacement of previously funded facilities to complete the recycling project.

#### D. Capacity Limitations

##### 1. Treatment Works Capacity

- a. The Division will determine eligible capacity of treatment works using average dry weather flow and appropriate peak flows in accordance with population and per capita flow estimates provided by the applicant. The applicant will be responsible for documenting, in the Project Report, the average dry weather flow and peaking factors used for the project. Project capacity must be consistent with environmental constraints.
  - i. The Division will calculate eligible capacity by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the Division will base the per capita flow on the existing population and the measured flow. This flow will be deemed to include the entire eligible project flows (residential, commercial, existing federal facilities, existing industrial, and infiltration/inflow). The Division will determine eligible capacity prior to the funding approval.
  - ii. Eligible design capacity for treatment facilities may be based on flow projections up to a period of twenty (20) years from the initiation of

operation. For projects designed to serve a capacity greater than 20 years after initiation of operation, the Division will determine eligible and ineligible costs on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.

- iii. Eligible design capacity for collection systems, interceptors, and outfalls may be based on flow projections up to forty (40) years from the initiation of operation. The Division will allocate between eligible and ineligible costs for capacity needs more than forty years after initiation of operation on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.

b. Population Projections

The applicant must submit population projections from an independent source (i.e., Regional Council of Governments, appropriate local planning agencies, Department of Finance, or Area-wide Water Quality Management Plans prepared pursuant to Section 208 of the CWA). The Division will use population or flow projections to determine the eligible treatment works capacity. The Division may require additional documentation to support the projection's reasonableness. The applicant must include a detailed discussion of the local projections in the Project Report.

2. Non-Treatment Works Capacity

The Division will determine eligible capacity of non-treatment works projects using appropriate engineering criteria and data provided by the applicant. Project capacity must be consistent with environmental constraints.

**X. PROJECT FINANCING AGREEMENT**

A. Financing Approval

1. The applicant may receive a financing agreement based on the estimated eligible project costs after an application for its project has been reviewed and approved.
  - a. For routine, noncontroversial, fundable applications, the Executive Director, Deputy Director of the Division, or designee is authorized to approve financing.
  - b. Non-routine or controversial fundable projects will be considered by the State Water Board at a State Water Board meeting.
  - c. At closing, the applicant will generally be expected to submit an opinion satisfactory to the Division's counsel from its general counsel and, if relevant, its bond counsel, substantially similar to the templates in Appendix Q.

- d. Applicants may start construction prior to execution of the financing agreement, but are not guaranteed financing approval and an executed financing agreement

## B. Execution of the Financing Agreement

The Executive Director, Deputy Director of the Division, or designee, may execute agreements and amendments on behalf of the State Water Board for projects with approved applications.

### 1. Conditions and Expiration Date(s)

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

### 2. Allowances (Soft Costs)

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

### 3. Compliance with Federal and State Statutes and Authorities

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

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

## C. Financing Agreement Amendments

Most agreements will be amended to finalize the budget, after contractor selection.

### 1. Final Budget Approval Package

The recipient must submit complete and adequate final budget information as shown in the final budget approval package. The primary focus of the review



of the final budget approval package will be to determine consistency with the approved financing and compliance with applicable CWSRF Program requirements, including federal cross-cutters.

- a. The recipient must submit the final budget approval package to the Division for review and approval prior to disbursement of construction or previously unidentified unapproved equipment or material, or labor costs. The Division will also review the package to ensure that both the recipient and its consultants, contractors, or vendors have complied with the applicable requirements of this section, any conditions specified in the financing approval, and that all permits, approvals, and financing necessary to complete the project have been obtained.
- b. Neither the USEPA nor the State Water Board will participate in resolving bid or contractual disputes. The recipient will have sole responsibility to resolve all bid or contractual disputes. The amended financing agreement will not be sent to the recipient until all bid and/or contract disputes have been resolved to the Division's satisfaction.
- c. The Division will use the bids, proposals, and purchase orders accepted by the recipient, along with the requested contingency amount to determine the eligible amended financing agreement amount
- d. If the final budget cost exceeds the financing agreement amount determined in Section X.A., the Division may update its financing limit determination per Section IX.B.4.b.i
- e. The applicant may be required to submit updated financial information.
- f. The recipient must certify that it complies with all applicable public contracting requirements.

## 2. Execution of Amendment

- a. In general, after the Division reviews and approves the final budget approval package, it will incorporate its eligibility decisions into an amended financing agreement and send the amendment to the recipient for signature. The amended financing agreement must be executed prior to disbursement of costs identified in the final budget approval package. For good cause, the Deputy Director may allow the disbursement of costs identified in the final budget approval package prior to the execution of the amended financing agreement for small SDAC and small DAC.
- b. The Completion of Construction date will be revised in the amended financing agreement for the purpose of determining the recipient's final payment schedule. The final Completion of Construction date will be established by mutual agreement between the Division and the recipient.

#### D. Cost Increases

1. The applicant may include a contingency amount in its application, subject to Division approval. The Division's credit review will evaluate the contingency amount. If the credit review shows the applicant can afford repayment, the financing agreement will include the contingency amount. The recipient can use this contingency amount, plus any other funds remaining due to construction/implementation or allowance cost reductions, to pay for change orders approved by the Division. The Division will disencumber any unused funds at the end of the project.
2. Where the financing agreement provides for one hundred percent (100%) Non-Repayable Financing, the total amount of CWSRF Non-Repayable Financing cannot exceed the limits established in the IUP or the amount made available by USEPA. The Division-approved contingency amount shall not exceed ten percent (10%) of the total project cost.
3. In general, the State Water Board will not increase or add funds to the financing agreement after the final budget is approved and the amended financing agreement is executed. All project changes that result in costs that exceed the approved financing amount will be the responsibility of the recipient. For good cause, the Deputy Director may increase the financing agreement amount for small SDAC and small DAC after the final budget is approved. Any request for an increase in the financing agreement must be submitted to and approved by the Division prior to incurring costs and are subject to denial by the Division.

### XI. **PROJECT DISBURSEMENTS**

#### A. Disbursements in General

1. All disbursements are subject to federal and state requirements and/or limitations notwithstanding any provisions of this Policy. Disbursement of funds is contingent on execution of a financing agreement, and the State Water Board will not disburse funds until after a financing agreement has been executed. A recipient may request disbursements at any time after execution or amendment of a financing agreement that identifies the specific costs. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements. The Division will not disburse funds for construction until the recipient adopts any necessary rate increase subject to Proposition 218. (See Cal. Const., Art.XIII D, § 6; Gov. Code, § 53750 et seq.)
2. The Division will send the recipient a copy of the Request for Disbursement form with the financing agreement. *Appendix F* contains specific instructions for requesting disbursements. The Division will send the recipient a copy of each processed disbursement request to show the total amount disbursed.

3. The recipient must ensure that adequate local funding is available to pay its consultants, contractors, and vendors in case the disbursement is not processed before payment to the consultant, contractor, or vendor is due.
4. In limited circumstances, principal, interest and fees on bridge financing may be eligible for reimbursement. Applicants should contact the Division with the terms of the bridge financing prior to securing funds or establishing a credit line.
5. If the recipient incurs eligible project costs before the financing agreement is executed, it does so at its own risk.
6. The Division will base disbursement on the amount of money currently due and payable to a consultant, contractor, or vendor for eligible costs incurred, minus any amounts previously disbursed by the Division.
7. The recipient must certify that work has been completed and that claimed costs were incurred. The recipient must submit invoices or other documentation acceptable to the Division to substantiate the reimbursement of costs. Ineligible or questioned costs may result in suspension of disbursements.

#### B. Initial Financing Agreement Disbursements

##### 1. Allowances

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

##### 2. Pre-purchase Material and Equipment

After execution of the financing agreement, the Division may disburse funds for eligible, identified pre-purchased material and equipment used in the project that was purchased in accordance with state and federal law prior to the eligible start date of the financing agreement. The Division will make disbursements for actual, eligible, incurred pre-purchase material and equipment costs supported by documentation to substantiate disbursement of these costs.

#### C. Amended Financing Agreement Disbursements

1. The Division will disburse remaining soft costs paid during construction/implementation as costs are incurred. The Division will review and approve soft costs based on each applicant's project and documentation submitted supporting incurred soft costs.

2. The Division will not disburse funds for construction costs incurred prior to the eligible start date of the financing agreement. The actual bid or identified costs must be included in the financing agreement in order for those costs to be eligible for disbursement. The Division may disburse all eligible costs after the agreement is amended to incorporate the actual bid or identified costs. (See Appendix F for instructions.)

#### D. Final Disbursement

1. Division staff and the recipient will establish a deadline for submittal of the final disbursement request. The complete final disbursement request must be received by the Division in a timely manner. The final disbursement request will not be processed until the Project Completion Report is submitted per *Section XIII of this Policy*.
2. As a courtesy, the Division will normally send a reminder notice approximately three months before the due date for the final disbursement request, but prompt submittal remains the responsibility of the recipient. If the Division has not received the complete final disbursement request and prior approval has not been granted to submit the final disbursement request at a later time, then the Division may deobligate the undisbursed balance of the CWSRF financing agreement.

## **XII. PROJECT CONSTRUCTION OR IMPLEMENTATION**

#### A. Pre-Project Conference or Media Events

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

#### B. Inspections: Interim and Final

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

#### C. Progress Reports

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

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

### **XIII. PROJECT COMPLETION REPORT**

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

### **XIV. PROJECT FINANCING PAYMENTS**

- A. Interest and other charges, if applicable, will accrue on all disbursements as of the date of each disbursement. The Division will issue a revised payment schedule after the recipient submits an approvable final disbursement request.
- B. Financing agreements will be fully amortized no later than the earlier of thirty (30) years after Completion of Construction or the end of the Project's useful life. The amount to be paid will include the amount financed plus accrued interest, administration service, and SCG funding charges, if applicable.
- C. The Division will prepare a payment schedule that includes:
  1. The interest rate, and, if applicable, an administrative service charge and SCG funding charge;
  2. Amount of CWSRF funding;
  3. The final principal amount of the financing agreement including accrued interest, administration service charge, and SCG funding charge, if applicable; and

4. A complete amortization table.
- D. The recipient must make its first annual payment not later than one year following the Completion of Construction date, as established in the financing agreement.
1. As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the payment due date, but prompt payment remains the responsibility of the recipient.
  2. The recipient will have a ten-day grace period, after which time the State Water Board will assess a penalty in the amount of costs incurred for lost interest earnings, staff time, bond default penalties, and other costs incurred or flowing from the late payment. Any penalties will be deposited in the CWSRF account. Penalties will not change the principal balance of the financing agreement and will be treated as a separate receivable in addition to the annual payment due.
  3. All payments are to be sent to:

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

E. Pre-Payments

Loan prepayments require the consent of the Deputy Director of the Division (see Section X of the Clean Water and Drinking Water State Revolving Funds Debt Management Strategy).

F. Loan Compliance and Monitoring

1. Evaluation

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

## **XV. RECORD KEEPING REQUIREMENTS**

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

## **XVI. BOARD RESERVATION OF AUTHORITY**

- A. Prior to approving any financing, the State Water Board reserves the right to modify this CWSRF Policy as necessary to provide for effective and equitable use of CWSRF funds, including:
  - 1. Reducing the eligible funding amount for any project for due cause;
  - 2. Conforming to applicable state and federal laws, rules, regulations, or agreements, including but not limited to the Operating Agreement, the Capitalization Grant Agreement, and agreements related to any CWSRF revenue bonds.
- B. The Deputy Director of the Division may update and amend the CWSRF Policy Appendices and create new Appendices, unless doing so would require additional approval by USEPA or the Executive Director, as necessary for administrative or procedural changes not in conflict with this Policy.

## **XVII. DISPUTES**

- A. Division approvals or actions taken under previous versions of this Policy remain valid. Division approvals or actions after the effective date of this Policy amendment that conflict with or are inconsistent with approvals or actions taken under previous versions of this Policy will be resolved by the Deputy Director of the Division.
- B. An applicant or recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. An applicant or recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine

not to review the final Division decision, this decision will represent a final agency action on the dispute.

- C. Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.