

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2008-0053**

**AMEND THE WATER RECYCLING FUNDING PROGRAM GUIDELINES TO CLARIFY
ELIGIBLE COSTS AND MODIFY THE WAIVER OF LITIGATION RIGHTS LANGUAGE**

WHEREAS:

1. The State Water Resources Control Board (State Water Board) is authorized to administer bond funds approved by the voters in 1984, 1988, 1996, 2000, and 2002 and State Revolving Fund Loan Program funds for the purpose of loans and grants to public agencies and privately-owned water utilities for the planning and construction of water recycling facilities.
2. The State Water Board adopted revised Water Recycling Funding Program Guidelines (Guidelines) on October 21, 2004, for the administration of these funds.
3. During the course of administration of the Water Recycling Funding Program, it has been determined that it is necessary to clarify eligibility criteria in the Guidelines to maintain consistency in interpretation and conformance to bond laws and laws and regulations governing the use of bond funds.
4. On February 1, 2006, the State Water Board passed [Resolution No. 2006-0011](#) adopting modified language related to waiver of litigation rights for use in grant programs.
5. The Division of Financial Assistance proposes amending the Guidelines as shown in Exhibit A.

THEREFORE BE IT RESOLVED THAT:

The State Water Board approves the amendments shown in Exhibit A to the current Guidelines to clarify the description of eligibility criteria and modify waiver of litigation rights language.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on July 15, 2008.

AYE: Chair Tam M. Doduc
Vice Chair Gary Wolff, P.E., Ph.D
Arthur G. Baggett, Jr.
Charles R. Hoppin
Frances Spivy-Weber

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board

EXHIBIT A

PROPOSED AMENDMENTS TO THE WATER RECYCLING FUNDING PROGRAM GUIDELINES

1. Amend Section I.E.4. Waiver of Litigation Rights as follows:

4. Waiver of Litigation Rights Related Litigation:

~~Grant agreements funded by the SWRCB will specify that acceptance of grant funds constitutes a waiver of litigation rights (including pending actions) to challenge any SWRCB or Regional Water Quality Control Board (RWQCB) regulation or order, which is reasonably related to the purpose of the grant.~~

Grant agreements funded by the SWRCB will specify that under no circumstance may a Grantee use funds from any disbursement under the grant agreement to pay costs associated with any litigation the Grantee pursues against SWRCB or any Regional Water Quality Control Board (RWQCB), regardless of the outcome of any such litigation, and notwithstanding any conflicting language in the grant agreement, the Grantee agrees to complete the Project funded by the grant agreement or to repay the grant funds plus interest.

2. Amend Section III.I.1. Eligible Costs as follows:

1. Eligible Costs

The following items are eligible for funding:

a. Construction cost of recycled water recycling treatment, storage, pump stations, and distribution pipeline systems, provided that:—~~SRF funded facilities must remain in public ownership.~~

- Facilities are located as appropriate to serve best the function of the funded recycled water system, including on a use site.
- Facilities remain in public ownership. For privately owned water utilities receiving grant funds from Proposition 50, funded facilities must remain in the ownership of the utility contracted to receive the state funds. Transfer of ownership to an entity other than the recipient of the state funds must be to a public agency as authorized by the State Water Board.
- Facilities are located on land with adequate rights-of-way for the useful life of the project.

b. Recycled water distribution pipeline systems, from the source of supply to the reuse sites. Eligibility of a pipeline system on the user's property is limited to:

- Recycled water service line up to and including the water meter if the meter is located in the proximity of the property line.
- Recycled water service line to the main storage facilities serving the user on the reuse site or, to the initial division of the recycled water flow on the use site to multiple use areas.

c. Recycled water distribution pipeline with a terminal point serving a user that is committed by mandatory use ordinance or by user contract to take recycled water. If only a portion of a pipeline serves users secured by a firm commitment, then eligibility extends to the most downstream user secured by a commitment.

- d. The capacity of a project used within ten years of completion of construction. Pump station wet wells and pipelines may have an eligible capacity of up to 20 years when documented by a market assessment showing the 20-year service area, and corresponding uses, and flows.
- e. Reasonable costs to provide an emergency backup water supply for the recycled water system.

Eligible capacities are measured in terms of annual recycled water deliveries determined by recycled water market assurances. At least 50 percent of the eligible project capacity must serve users that will exist by the time of completion of construction. ("Existing user" is defined in Appendix H.)

Eligible sizes of facilities components are based on reasonable design criteria to serve these annual deliveries. Eligible costs for partially eligible capacity will be determined on an incremental cost rather than pro rata cost basis.

Applicants constructing pipelines or treatment facility capacity, in excess of that which can be utilized within five years of completion of construction, must demonstrate that adequate recycled water supply and demand will be available to support that future capacity.

3. Amend Section III.I.2. Ineligible Costs as follows:

2. Ineligible Costs

The following costs are not eligible for construction funding:

- Costs of planning for a project;
- Costs of applying for funding;
- Costs of on-site retrofit facilities, that is, facilities to convert to recycled water use;
- Costs of on-site irrigation facilities;
- Costs of land, easements, and rights of way;
- Costs for operation and maintenance of project facilities;
- Legal and court costs resulting from violation of state and federal laws or as a result of the CEQA process, excluding the cost of capital facilities required to be built as a condition or result of a legal or court settlement;
- Indirect costs of construction performed by the funding recipient's work force.¹

¹ A more detailed discussion of force account cost eligibility may be found in Appendix C "Guidelines on Force Account Eligible Costs."