

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
JUNE 3, 2008**

**ITEM 11**

**SUBJECT**

CONSIDERATION OF A RESOLUTION REGARDING OCCIDENTAL COUNTY SANITATION DISTRICT'S (DISTRICT'S) REQUEST FOR A WAIVER OF SITE DESCRIPTION AND LEGAL OPINION REQUIREMENTS ASSOCIATED WITH THE SMALL COMMUNITY WASTEWATER GRANT (SCWG) PROGRAM, FOR THE OCCIDENTAL COLLECTION SYSTEM REPLACEMENT PROJECT (PROJECT) - SCWG PROJECT NO. SCG-802

**DISCUSSION**

The SCWG Program Statewide Competitive Project List, adopted by the State Water Resources Control Board (State Water Board) on October 21, 2004, and amended on September 4, 2007, included the District's Project under fundable Priority Class B. On July 2, 2007, under the authority of State Water Board [Resolution No. 2007-0004](#), the Deputy Director of the Division of Financial Assistance (Division) adopted Division Resolution No. 2007-021 for a SCWG Preliminary Funding Commitment (PFC) of \$2,000,000 for design and construction of the Project. The District is to receive \$111,519 in design grant funding. The remaining grant funding of \$1,888,481, is available to the District for construction of the Project.

The Project is located in the unincorporated community of Occidental, in Sonoma County (County), approximately 15 miles west of the City of Santa Rosa. The Project objectives are to reduce wet weather flows entering the existing wastewater treatment facility, to minimize the potential for future sanitary sewer system overflows, and to comply with North Coast Regional Water Quality Control Board (Regional Water Board) [Cease and Desist Order \(CDO\) No. R1-2005-0085](#). The Project will replace and upgrade approximately fifty percent (50%) of the existing collection system piping, which has been identified as a source of excessive infiltration and inflow.

Appendix F of the SCWG Program Guidelines ([Guidelines](#)), adopted by the State Water Board on June 17, 2004, and amended on May 22, 2007, provides requirements for the Approval-to-Award (ATA) Request Package, which is to be submitted by the applicant to the Division for review and approval. Similar requirements have existed for over a decade, and were included in the Guidelines adopted by the State Water Board on April 30, 1997.

Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines, require a legal description of the site on which the Project is to be constructed and an opinion signed by competent title counsel describing the interest the applicant has in the site and certifying that the interest is legal and valid. The Guidelines state that the opinion should include information as to whether or not: 1) the applicant has good and valid title to the entire site free and clear of any pre-existing mortgages, deeds of trust, liens or other encumbrances, which would affect the value or usefulness of the site for the purpose intended; and 2) any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded or filed for record whenever necessary.

The wastewater collection, treatment, and disposal system that serves the community of Occidental is District-owned and serves approximately 120 persons. The system is operated and maintained by the Sonoma County Water Agency (Agency). The District is a separate legal entity from the Agency. However, staff from the Agency work on behalf of and under contract with the District, as the District has no employees other than a General Manager. The General Manager of the District is also the General Manager of the Agency. The District and Agency have separate Boards of Directors, which are made up of the same members.

The Occidental collection system is within roadways that have been maintained by the County for approximately 50 years. However, the roadways were never dedicated to the County for maintenance, and a clear record of ownership does not exist for significant portions of the Project area. There is inherent risk in constructing the Project on such a site, as any future claim by a party asserting an interest in real property upon which the Project is located could affect the future value or usefulness of the Project. The Division has requested that the District conduct a title search of the Project area to get a better understanding of any pre-existing liens or other potential issues related to the title, so that State Water Board staff will be better able to determine whether any additional provisions should be included in the construction grant agreement for the Project. The District has refused to conduct the requested title search to determine whether there are any pre-existing liens, which has delayed the ATA letter and execution of the construction grant agreement for the District's Project.

In order to comply with the time schedule for compliance in CDO No. R1-2005-0085, the District has completed construction of the Project. The District cannot be reimbursed for the incurred construction costs until the ATA letter has been issued and the construction grant agreement executed. This has placed a financial burden on the District, which serves a small, disadvantaged community, and has limited resources. The District has requested a waiver of the site description and legal opinion requirements outlined in Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines. To limit associated potential risks to the State Water Board, the District has agreed to the inclusion of an indemnity clause in the construction grant agreement.

## **POLICY ISSUE**

Should the State Water Board:

Grant the District a waiver of the site description and legal opinion requirements outlined in Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines, with the condition that the construction grant agreement includes an indemnity clause, such that, in the event of the filing of any claim by any party asserting any interest in real property upon which the Project is located that could affect the value or usefulness of the Project, the District and Agency shall:

1. Take all actions necessary, at their sole cost and expense, to resolve such claims in a manner that will ensure the full continued operation and usefulness of the Project;
2. Indemnify and defend the State Water Board from and against such claims; and,
3. Reimburse the State Water Board the full amount of the construction grant funding provided within 30 days following a written demand by the State Water Board, should a claim result in a compromise or judgment that has a material adverse effect on the value or usefulness of the Project?

## **FISCAL IMPACT**

The State Water Board received approximately \$53.5 million from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Proposition 40), and the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50), and after subtracting funds to administer the SCWG Program, \$50,750,000 were available to fund projects to resolve existing or potential public health threats or pollution problems. Currently, all Propositions 40 and 50 funds have been committed to eligible projects.

On July 2, 2007, under the authority of State Water Board Resolution No. 2007-0004, the Deputy Director of the Division adopted Resolution No. 2007-021 for a SCWG PFC of \$2,000,000 for design and construction of the Project. The District is to receive \$111,519 in design grant funding. Therefore, the remaining grant funding available to the District for construction of the Project is \$1,888,481.

## **REGIONAL BOARD IMPACT**

No impact.

## **STAFF RECOMMENDATION**

The State Water Board should:

Grant the District a waiver of the site description and legal opinion requirements outlined in Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines, with the condition that the construction grant agreement includes an indemnity clause, such that, in the event of the filing of any claim by any party asserting any interest in real property upon which the Project is located that could affect the value or usefulness of the Project, the District and Agency shall:

1. Take all actions necessary, at their sole cost and expense, to resolve such claims in a manner that will ensure the full continued operation and usefulness of the Project;
2. Indemnify and defend the State Water Board from and against such claim; and,
3. Reimburse the State Water Board the full amount of the construction grant funding provided within 30 days following a written demand by the State Water Board, should the claim result in a compromise or judgment that has a material adverse effect on the value or usefulness of the Project.

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2008-

REGARDING OCCIDENTAL COUNTY SANITATION DISTRICT'S (DISTRICT'S) REQUEST FOR A WAIVER OF SITE DESCRIPTION AND LEGAL OPINION REQUIREMENTS ASSOCIATED WITH THE SMALL COMMUNITY WASTEWATER GRANT (SCWG) PROGRAM, FOR THE OCCIDENTAL COLLECTION SYSTEM REPLACEMENT PROJECT (PROJECT) - SCWG PROJECT NO. SCG-802

### WHEREAS:

1. The SCWG Program Statewide Competitive Project List, adopted by the State Water Resources Control Board (State Water Board) on October 21, 2004, and amended on September 4, 2007, included the District's Project under fundable Priority Class B;
2. On July 2, 2007, under the authority of State Water Board [Resolution No. 2007-0004](#), the Deputy Director of the Division of Financial Assistance (Division) adopted Division Resolution No. 2007-021 for a SCWG Preliminary Funding Commitment of \$2,000,000 for design and construction of the Project. The District is to receive \$111,519 in design grant funding. The remaining grant funding available to the District for construction of the Project is \$1,888,481;
3. Appendix F of the SCWG Program Guidelines ([Guidelines](#)), adopted by the State Water Board on June 17, 2004, and amended on May 22, 2007, provides requirements for the Approval-to-Award (ATA) Request Package, which is to be submitted by the applicant to the Division for review and approval. Similar requirements have existed for over a decade, and were included in the Guidelines adopted by the State Water Board on April 30, 1997;
4. Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines, require a legal description of the site on which the Project is to be constructed and an opinion signed by competent title counsel describing the interest the applicant has in the site and certifying that the interest is legal and valid. The Guidelines state that the opinion should include information as to whether or not: 1) the applicant has good and valid title to the entire site free and clear of any pre-existing mortgages, deeds of trust, liens or other encumbrances, which would affect the value or usefulness of the site for the purpose intended; and 2) any deeds or documents required to be recorded in order to protect the title of the owner and the interest of the applicant have been duly recorded or filed for record whenever necessary;
5. The wastewater collection, treatment, and disposal system that serves the community of Occidental is District-owned and serves approximately 120 persons. The system is operated and maintained by the Sonoma County Water Agency (Agency). The District is a separate legal entity from the Agency. However, staff from the Agency work on behalf of and under contract with the District, as the District has no employees other than a General Manager. The General Manager of the District is also the General Manager of the Agency. The District and Agency have separate Boards of Directors, which are made up of the same members;

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6. The Occidental collection system is within roadways that have been maintained by Sonoma County (County) for approximately 50 years. However, the roadways were never dedicated to the County for maintenance, and a clear record of ownership does not exist for significant portions of the Project area;
7. There is inherent risk in constructing the Project on such a site, as any future claim by a party asserting any interest in real property upon which the Project is located could affect the future value or usefulness of the Project. The Division has requested that the District conduct a title search of the Project area to get a better understanding of any pre-existing liens or other potential issues related to the title, so that State Water Board staff will be better able to determine whether any additional provisions should be included in the construction grant agreement for the Project;
8. The District has refused to conduct the requested title search to determine whether there are any pre-existing liens, which has delayed the ATA letter and execution of the construction grant agreement for the District's Project;
9. In order to comply with the time schedule for compliance in North Coast Regional Water Quality Control Board [Cease and Desist Order \(CDO\) No. R1-2005-0085](#), the District has completed construction of the Project. The District cannot be reimbursed for the incurred construction costs until the ATA letter has been issued and the construction grant agreement executed. This has placed a financial burden on the District, which serves a small, disadvantaged community, and has limited resources; and;
10. The District has requested a waiver of the site description and legal opinion requirements outlined in Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines. To limit associated potential risks to the State Water Board, the District has agreed to the inclusion of an indemnity clause in the construction grant agreement.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Grants the District a waiver of the site description and legal opinion requirements outlined in Paragraphs 6.A.1 and 6.A.2, in Appendix F of the Guidelines, with the provision that the construction grant agreement includes an indemnity clause, such that, in the event of the filing of any claim by any party asserting an interest in real property upon which the Project is located that would affect the value or usefulness of the Project, the District and Agency shall:

1. Take all actions necessary, at their sole cost and expense, to resolve such claims in a manner that will ensure the full continued operation and usefulness of the Project;
2. Indemnify and defend the State Water Board from and against such claim; and

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3. Reimburse the State Water Board the full amount of the construction grant funding provided within 30 days following a written demand by the State Water Board, should the claim result in a compromise or judgment that has a material adverse effect on the value or usefulness of the Project.

## **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 June 3, 2008.

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Jeanine Townsend  
Clerk to the Board