

**Exhibit B**  
**STATE  
WATER  
RESOURCES  
CONTROL  
BOARD**



CALIFORNIA  
ENVIRONMENTAL  
PROTECTION  
AGENCY



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



Amended  
September  
2008July  
2007

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

Prepared by:  
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD  
STATE OF CALIFORNIA

Last amended on September 2, 2008~~July 17, 2007~~

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## ACKNOWLEDGMENTS

The State Water Resources Control Board thanks the individuals within the State Water Resources Control Board and members of Tri-TAG who freely shared their time in developing and amending the Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities.

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FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

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## EXECUTIVE SUMMARY

This Policy was written to implement the 1987 Amendments to the Federal Clean Water Act (CWA), which created the Clean Water State Revolving Fund (~~SRFL~~loan-CWSRF) Program. The SRFCWSRF provides ~~loan funding and other~~various types of assistance for construction of publicly-owned wastewater treatment works and water ~~reclamation~~recycling facilities, ~~development and~~ implementation of programs to control pollution from nonpoint sources and stormwater drainage, development and implementation of estuary cleanup programs. This Policy covers SRFCWSRF assistance for the construction of wastewater treatment and water ~~reclamation~~recycling facilities.

This Policy is organized in sequential Pproject development order. Sections I through VIII discuss general requirements, including ~~the~~ Local Match Program and the Statewide Project Ppriority List (Statewide List) system (~~Statewide List~~), Section IX discusses facilities planning, and Section X discusses design review and Pproject Pperformance Sstandards. Sections XI through XVI discuss ~~loan~~financing specifics, Sections XVII~~†~~ and XVIII~~†~~ discuss Construction and Operation respectively, and Sections XVI~~XII~~ through XXI~~†~~ discuss record keeping, ~~repayments~~payments, and resolution of disputes.

## I. INTRODUCTION

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

This is the ~~eighth~~ninth amendment to the SRFCWSRF Policy originally adopted by the State Water Resources Control Board (~~SWRCB~~State Water Board) on August 18, 1988. The requirements contained in this amended SRFCWSRF Policy apply to all ~~P~~projects receiving Facilities Plan Approval from the Division of Financial Assistance (Division) after ~~July 17, 2007~~September 2, 2008. A flow chart of the overall program ~~process~~cedures is provided in Appendix A. A list of contacts in the Division is provided in Appendix B. ~~Appendices C through R~~ Appendices C through R contains additional Division guidance material on the SRFCWSRF Program.

## II. PURPOSE AND OBJECTIVE

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

The State Water Board is also interested in reducing the effects of climate change and promoting efforts to ensure sustainable water resources for future generations. The provisions of this Policy are designed to support these secondary objectives where economically and technically feasible. These secondary objectives must be shown to be a cost effective, integral component of the proposed project facilities that support the primary purpose of the State Water Board.

### III. DEFINITIONS

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

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

whether a firm is fundamentally qualified to compete for a certain project or class of projects.

- (7) “Request For Design-Build Proposal” means the document issued by the owner to solicit design and construction services proposals from the pre-qualified Design-builders and that contains the project objectives, project design criteria, site information, contract requirements, selection procedure and proposal (submittal) requirements.

~~(f) “Disadvantaged community” means a community with a population of less than 20,000, and either: (1) a statewide Median Household Income (MHI) of less than eighty percent (80%) of the statewide MHI; or (2) a community sewer rate of more than four percent (4%) of the community’s MHI. Multiple disadvantaged communities that join together to implement a regional wastewater solution shall still be considered disadvantaged if their cumulative population exceeds 20,000.~~

~~(gf) “Division” means the Division of Financial Assistance, within the the Division of Water Quality, SWRCBState Water Board, or any other segment-Division of the SWRCBState Water Board authorized to administer the Clean Water State Revolving FundCWSRF Loan-Program.~~

~~(g) “Effective Loan Date” means the date specified in the loan contract after which eligible construction costs under the loan contract can may be incurred. This date will generally be the date of final plans and specifications approval.~~

(h) “Eligible Project Cost” means that portion of the total cost of a Pproject that is eligible for loan financial assistance from the Clean Water State Revolving Fund pursuant to Ffederal and State laws, rules, regulations, policies and guidelines.

(i) “Environmental Documents” means either an Initial study and Negative Declaration or an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act (CEQA) and associated documents that show compliance with federal environmental laws.

~~(j) “EPA” means the United States Environmental Protection Agency.~~

~~(kj) “Estuary Enhancement Project” means a Project that implements a Comprehensive Conservation Management Plan established in accordance with section 320 of the CWAny programs, devices, methods, or systems used to attain or maintain water quality in an estuary nominated by the Administrator of EPA, which assures protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.~~

~~(k) “Excessive Infiltration/inflow” means a flow rate in excess of acceptable threshold values as defined by Section IX.A.45. of this document.~~

- (m) “Facilities Plan Approval (FPA)” means approval by the Division of the Project concept being proposed by the applicant.
- (am) “Federal Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C.A. 1251 et seq.) including any amendments thereto.
- ~~(n) “Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board, and the applicant, in which the terms, provisions, and conditions governing the CWSRF financing are stated.~~
- (o) “House Lateral” means the sewer pipe from the public right-of-way to the residential, commercial, institutional, or industrial structure. .
- (p) “Housing Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.
- (q) “Infiltration” means the water entering a sewer system including that from service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.
- (r) “Infiltration/Inflow” means the total quantity of water from both infiltration and inflow without distinguishing the source.
- (s) “Infiltration/Inflow Analysis” means a study to demonstrate the nonexistence, or possible existence, of excessive Infiltration/Inflow in each sewer system tributary to the treatment works.
- (t) “Inflow” means the water discharged into a sewer system including that from service connections, such as, but not limited to, roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. It does not include, and is distinguished from, infiltration.
- (u) “Initiation of Construction” means the date that the Notice to Proceed with the work is issued for the Project, or if the notice is not required, the date of commencement of building and erection of the project.
- ~~(v) “Land Use Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.~~
- ~~(w) “Loan Contract Award” means the written agreement signed by all parties and any amendments thereto, between the SWRCB, and the applicant, and approved by the Department of General Services in which the terms, provisions, and conditions governing the State Revolving Fund loan are stated.~~

- (~~wx~~) “Nonpoint Source Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture.
- (~~xy~~) “Preliminary ~~Loan-Funding~~ Commitment” means a formal action by the ~~SWRCB~~State Water Board ~~or the Chief of the Division or one of its designees~~ approving and reserving funds for the ~~P~~project.
- (~~yz~~) “Project” means any distinguishable segment, or segments, of a wastewater treatment facility described in the approved facilities plan, which can be bid separately, and for which ~~loan-financial~~ assistance is being requested or provided.
- (~~aa~~z) “Project Completion” ~~and “Initiation of Operation”~~ means the date, ~~as determined by the Division after consultation with the loan recipient,~~ that operation of the treatment facility is initiated, or is capable of being initiated, whichever comes first ~~as certified by the applicant.~~
- (~~ab~~aa) “Recipient” means an applicant ~~who has with~~ an executed ~~loan-financing contract agreement~~ signed by all parties.
- (~~ac~~ab) “Refinancing” means the use of ~~State Revolving Fund~~CWSRF ~~Loan~~ monies to refinance local external borrowings (borrowings from outside the local agency for eligible ~~P~~projects) ~~at more attractive terms.~~
- (~~ad~~ac) “~~RWQCB~~Regional Water Board” means the appropriate California Regional Water Quality Control Board.
- (~~ae~~) ~~“Retroactive Projects” means those projects, which proceed to construction prior to award of the loan contract.~~
- (~~af~~d) “Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration/Inflow.
- (~~ag~~e) “~~SWRCB~~State Water Board” means the California State Water Resources Control Board.
- (~~ah~~f) “Storm Drainage Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or ground waters of the State.
- (~~ai~~g) “Sustainability” means balancing economic, environmental, and social factors in an equitable manner to maintain and protect the water resources needs of

the present generation without compromising the ability of future generations to meet their own water resources needs.

- (a)h) "Treatment Facilities" means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement Section 201 of the Federal ~~Clean Water Act~~CWA, or necessary to recycle or reuse water at the most economical cost over the estimated life of the facilities, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities. In addition, "treatment facilities" means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.
- (a)i) "Useful Life" means the period of time over which the funded facilities will serve their intended purpose in a cost-effective manner from the estimated Project Initiation of Operation date.
- (a)k) "Water Quality Assessment" means a report prepared by the ~~SWRCB~~State Water Board to identify the water quality conditions in the waters of the State.
- (a)k) "Water Quality Control Plan" means a ~~SWRCB~~State Water Board approved plan adopted pursuant to Division 7 of the Water Code designating or establishing beneficial uses and water quality objectives for water within a specified area and a program of implementation needed to achieve these objectives.

#### IV. PRIORITY SYSTEM

The primary purpose of this section is to implement a Priority System for providing ~~SRCWSRF loan-funding~~ assistance for the planning, design, and construction of wastewater treatment, nonpoint source, storm drainage, water recycling, and estuary enhancement ~~P~~projects and programs eligible under Title VI of the CWA.

##### A. Development of ~~RWQCB~~Regional Water Board Recommendations

1. Annually, each ~~RWQCB~~Regional Water Board Executive Officer shall develop ~~Project Priority List~~ recommendations for the ~~RWQCB~~ Projects in the Region that should be on the Statewide Project Priority List (Statewide List).
2. The Executive Officers' ~~Project Priority List~~ recommendations shall be transmitted to the Division each year by the scheduled date set by the Division.



B. Development of Statewide ~~Project~~ Priority List

Annually, after review of the Executive Officer's' ~~Project Priority List~~ recommendations, the ~~SWRCB State Water Board~~ shall adopt a Statewide ~~Project Priority List (Statewide List)~~. The Statewide List shall identify those ~~P~~projects for which assistance from the ~~SRFCWSRF Loan~~ Program is expected during the succeeding five-year planning period.

1. The Statewide List shall be adopted by the ~~SWRCB State Water Board~~ ~~not later than by~~ June 30 of each year.
2. The fundable portion (first year) of the Statewide List shall include ~~all those wastewater treatment, water recycling, nonpoint source, storm drainage, and estuary enhancement P~~projects, which have received a preliminary ~~loan-funding~~ commitment and are scheduled for ~~loan-a financing agreement assistance~~ during the first year of the five-year planning period. Projects receiving a preliminary ~~loan-funding~~ commitment during the fiscal year shall be automatically moved to the fundable portion (first year) of the Statewide List provided the ~~P~~project is scheduled to receive a ~~loan-contract financing agreement~~ in the current fiscal year. The extended portion of the Statewide List shall include those ~~P~~projects without a preliminary ~~loan-funding~~ commitment and those scheduled for a ~~loan-contract financing agreement~~ during the following four years. Placement on the extended portion of the Statewide List will be based on ~~P~~project schedules.
3. Placement of a ~~P~~project on the Statewide List shall not constitute a commitment to provide ~~loan-financial~~ assistance.

C. Priority Classes

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

1. Class A -- Public Health Problems.
  - a) Publicly Owned Wastewater Treatment Facilities ~~P~~projects required to alleviate public health problems where the County Board of Supervisors, City Councils, or the County Health Officer has certified that a health problem exists, and where a RWQCB Regional Water Board has (1) adopted a prohibition for elimination of discharges from individual treatment systems and such prohibition has been approved by the SWRCB State Water Board, or (2) approved a local moratorium prohibiting the construction of new individual systems (See Appendix C), or (3) adopted a cease and desist order; ~~or and~~
  - b) nonpoint source, storm drainage pollution, and estuary enhancement ~~P~~projects required to comply with prohibitions, postings, limitations, or warnings that have been imposed by responsible health authorities, and where the RWQCB Regional Water Board has concurred with the findings of the health authority and has established

a time schedule for correction or elimination of the threat to public health.

2. Class B -- Pollution of Impaired Water Bodies.  
Projects required to correct conditions where a certification is made by the RWQCB Regional Water Board Executive Officer that the water quality objectives for an impaired water body are not being attained.
3. Class C -- Compliance With Requirements ~~and or~~ Water Recycling Projects.  
1) Projects necessary to comply with Wwaste Ddischarge Rrequirements (WDRs) or other regulatory requirements formally imposed by the SWRCB State Water Board or RWQCB Regional Water Board, or Ppprojects necessary for correction of threatened violations of existing or proposed ~~waste discharge requirements~~ WDRs; ~~and or~~ 2) Ppprojects that provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses that will offset State and Local Water Supplies which recycle water and are cost effective when compared to the development of new sources of water or Projects that are necessary to meet state policy regarding recycled water.
4. Class D -- Projects Serving as Preventative Measures Against Additional Water Quality Degradation for Impaired or Unimpaired Water Bodies.  
Projects which would control discharges to impaired or unimpaired waters, where correction of such discharges may, or may not, be required through formally adopted waste discharge requirements. Includes Ppprojects to provide additional wastewater treatment capacity.
5. Class E -- Other Projects.  
Projects not included in any of the other priority classes.

D. Project Ranking

The State Water Board will determine which classes are fundable. Projects within fundable Priority Classes each priority class shall be ranked on the basis of readiness to proceed. The project with the earliest estimated date for award of a loan contract will be ranked above a project with a later estimated date. In the case of a tie, the project discharging to the water body with the greater resource value will be ranked higher. shall be funded based on readiness to proceed.

E. Restrictions and Adjustments

1. If a Ppproject falls in more than one priority class, the full Ppproject shall be placed in the highest priority class applicable to the more costly segment of the Ppproject, except as specifically ordered by the SWRCB State Water Board.

2. If the priority classification of a Pproject is in any way dependent upon State, County, or local action, or upon SWRCB State Water Board or RWQCB Regional Water Board action, only action taken prior to the adoption or amendment to the Statewide List will be considered.
3. The Statewide List may be adjusted or amended by the SWRCB State Water Board for good cause subject to approval by EPA the United States Environmental Protection Agency (USEPA).
4. The SWRCB State Water Board reserves the right to transfer treatment facilities Projects from one priority class to another priority ranking class, to reduce the eligible cost of any Pproject, and to allocate available funds among one or more priority classes when the SWRCB State Water Board determines such action to be necessary or appropriate for effective and equitable use of available monies. Such action will only be taken after a public hearing.
5. When appropriate, the SWRCB State Water Board may create a set-aside for the purposes of assuring that SRFCWSRF assistance will be available for select types of nonpoint source, water recycling, estuary enhancement, and storm drainage Pprojects and programs contained on the fundable portion of the Statewide List.

F. Management of the Statewide List

~~Before a facilities plan approval is given, a project implementation schedule shall be submitted by the applicant and approved in writing by the Division. The Division shall monitor and compare progress on the project to the established schedule to assure that the loan applicant is proceeding expeditiously with the project.~~

~~If at any time the Division determines that progress has slipped sufficiently to push the loan contractward beyond the end of the scheduled state fiscal year, the SWRCB may add a project, or projects, of approximately equal dollar value from the planning portion to the fundable portion of the Statewide List, provided the project, or projects have received preliminary loan commitments and are projected to be ready for loan contract during the current State fiscal year. After such additions, all projects on the fundable portion of the Statewide List will continue to compete on an as ready basis for available funds.~~

FG. Funding of Projects

~~Except as may be directed by the SWRCB, Pprojects on the fundable portion of the Statewide List will receive loan contract financing agreements and will be executed by from the SWRCB State Water Board, except as may be directed by the State Water Board, on an as ready to proceed with construction basis. If insufficient funds are available for all projects seeking funding, then the Division shall first fund projects based on the Priority Classes established above, giving priority within the Class to the~~

disadvantaged community with the lowest median household income. If the above factors are comparable, the project that most effectively addresses global climate change shall be funded first.

**GH. Project Additions, Removals and Changes**

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

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

Projects shall not be removed from the Statewide List unless:

1. The SWRCBState Water Board so instructs;
2. The Pproject has received a received CWSRF financing or is otherwise completedloan contract;
3. The RWQCBRegional Water Board so requests and the SWRCBState Water Board concurs; ~~or~~
4. The ~~loan~~ applicant so requests and the SWRCBState Water Board concurs; or-
5. The Project has been listed on the Statewide List for at least five years and the Agency has not submitted an application or requested that the Project remain on the Statewide List.

**V. LOCAL MATCH**

The Clean Water ActCWA requires the states to provide a match equal to 20 percent of the federal Capitalization Grant (state match) in order to receive federal monies. Subsection 13478 of Chapter 6.5 of Division 7 of the Water Code allows the SWRCB to enter into agreements with, and accept state match funds from local agencies in return for no interest SRF loans. Existing SRF Loans are not eligible for no interest loans. Applicants may contribute match and receive match financing.

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

A. Resolution

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

~~B. State Match Account~~

~~The recipient must establish a local state match account prior to issuance of the loan contract for the specific project for which the state match is being paid. The recipient must deposit sufficient funds in the account as necessary to make payments to the contractor.~~

BC. Terms

The interest rate on ~~state~~ match loans financing agreements shall be zero (0) percent. The ~~repayment~~ period is 20 years. The principal amount of the ~~loan financing (CWSRF share) agreement to be repaid is not reduced by payment of the state match~~ includes both the amount received from the State Water Board and the local match amount contributed by the local agency.

CD. Disbursements

1. Allowances ~~F~~for Architect/Engineer (A/E) and Administration Costs

Recipients ~~will also be~~ are required to ~~submit a certification~~ certify with the planning and design allowance ~~payment~~ disbursement requests ~~stating~~ that at least the ~~state~~ match portion of the incurred allowance costs have been paid. The Division will then ~~authorize the disbursement of the federal CWSRF share of the allowance requests~~ requested.

2. Construction Costs and Construction Allowance

Recipients ~~will be~~ are required to pay the match for each contractor(s) invoice ~~the state match share of the eligible loan financing amount of the contractor's invoices~~ prior to submitting the progress payment request to the Division.

As an alternative, recipients may pay the contractor(s) the full eligible amount of the contractor's invoices until they have paid an amount equal to the ~~state~~ match portion of the ~~loan~~ financed amount. ~~In either case, recipients are required to submit certification of such payments to the Division with each disbursement request. After full payment of the match to the contractor(s), recipients may request the remainder of the financed amount from the CWSRF.~~

3. Assurances

Certification of ~~such~~ payments to the contractor(s) must be submitted to the ~~Payments-Disbursements Unit with each pay request.~~ The Division will ~~then authorize the disbursement of the federal CWSRF share of the eligible payment financing amount, provided the recipient has certified that all past disbursements have been paid to the contractors and.~~ In addition to the certification of payment, recipients shall submitted copies of the canceled checks or other documentation of payment acceptable to the Division, on a quarterly basis, documenting payment of the ~~state CWSRF match amounts~~ to the contractors.

VI. RETROACTIVE FUNDING

~~No funds will be disbursed until after a financing agreement has been fully executed. However, Projects may receive funding for eligible Project construction costs incurred after the Division has approved Final Plans and Specifications (FP&S) or the Request for Proposal. Retroactive funding will be provided for only those projects where the applicant has submitted all required program documents and such documents have been approved before initiation of construction, but due to a lack of funds or other reasons, the applicant initiated construction after the approval of either plans and specifications or Request for Design-Build Proposals, but prior to issuance of the loan contract. Projects where construction is initiated before Division approval are not eligible for retroactive funding. Portions of the Project constructed prior to FP&S approval are not eligible for CWSRF funding, except for allowances.~~

VII. REFINANCING

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

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

~~B. Any recipient, not just disadvantaged communities, that has relied on short-term or bridge financing to cover the gap between the time of FP&S approval and execution of a financing agreement may use CWSRF funds to pay off such short-term debt provided funds are available to the Division for this purpose. As stated above in Section VI, only eligible Project costs incurred after FP&S approval may receive CWSRF funding. The use of SRF monies to refinance local external borrowings is eligible provided the project is approvable under Section VI. above. Refinancing of local debt will be contingent on the local borrowing document providing for recall of an amount at least equal to the amount of the SRF loan within two years of the SRF loan issuance.~~

## VIII. WATER RECYCLING PROJECTS

### A. Funding Sources and Applicable Policies

Water recycling ~~P~~projects generally serve one of two purposes: (1) meeting pollution control needs as specified in waste discharge requirements or (2) meeting water supply needs. ~~Water recycling Projects that for which water recycling is the cost-effective alternative to meet pollution control needs are funded by the SRF in accordance with the same SRF CWSRF Policy, and Projects meeting water supply needs are funded in accordance with the Water Recycling Funding Program (WRF) Guidelines. criteria applicable to other wastewater treatment and disposal projects. Projects for which water supply is the purpose may be funded by either the SRF or the SWRCB's Water Recycling Loan Program (WRLP). water supply-type recycling project will be funded under the WRLP unless (1) the WRLP funding cap is exceeded, (2) there are insufficient funds in the WRLP, (3) the applicant requests a zero-percent interest loan, or (4) the applicant proposes a Design-Build contract.~~

Water ~~supply-type water~~ recycling ~~P~~projects are placed in Priority Class C as ~~water recycling P~~projects that ~~provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses that will offset State and Local Water Supplies, are cost effective when compared to the development of new sources of water or Projects that are necessary to meet state policy regarding recycled water.~~ These projects must meet requirements contained in the amended WRLP Guidelines adopted by the SWRCB on April 17, 1997, or as later amended, as well as the requirements contained in this SRF Policy. The WRLP Guidelines are included in Appendix D.

~~The WRLP Guidelines may be more restrictive regarding eligible capacities than the SRF Policy.~~

### B. Multiple-Purpose Projects

A water-recycling ~~P~~project may be a multiple-purpose ~~P~~project, serving both water pollution control needs and water supply needs. ~~Multiple-purpose projects can be funded under the SRF, or jointly funded under the SRF and the WRLP.~~ However, the facilities associated with each purpose must be evaluated and the eligibility of

facilities determined in accordance with the applicable provisions of either the SRFCWSRF Policy or the WRLPWRF Guidelines.

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

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

## IX. FACILITIES PLANNING

~~Applicants will be required to complete a facilities planning process. Applicants must submit planning and financial documents to obtain funding for their projects. The documents include A complete facilities plan will include a Project Report, a complete Environmental Documents, and a draft Revenue Program~~Water Conservation requirement compliance documents, and credit analysis documents.

To ~~facilitate expeditious issuance of~~ a preliminary loan funding commitment, the Division will assist applicants with offer consultation regarding specific program requirements during facilities planning. ~~When an applicant is placed on the fundable portion of the Statewide List, the Division will offer assistance at the option of the prospective applicant. The assistance available will include guidance for (1) identifying project alternatives, (2) selecting the cost-effective alternative, (3) preparing the Project Report, the Revenue Program, and the Environmental Document.~~ The Division will also offer assistance to aid applicants in assuring that they have the ability to administer and manage the construction of the proposed Pproject.

### A. Project Report

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

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

1. A statement of Pproject needs and benefits, including a discussion of the water quality benefits of the Pproject and the public health or water quality problems to be corrected.



## 2. Proposed Project Service Area and composition.

- a. Median Household Income (MHI) and population for the proposed Project service area using census data or the most recent income survey if the census data does not accurately reflect the community's MHI. This information is used to analyze various factors, including affordability.
  - b. Total number of active wastewater service connections that are currently and directly served by the wastewater collection system. This includes a breakdown by each category for all domestic or residential, industrial, commercial or other connections. A map for the existing wastewater service area for the proposed Project must be provided.
  - c. The average current monthly wastewater charges by category. If the wastewater system uses a "tiered" rate, the charge should reflect what a typical user pays in each category and the basis of the charges. The rate should reflect direct wastewater charges plus any other fees or charges that support the wastewater service such as parcel fees, standby charges, wastewater taxes, and surcharges.
23. A cost effectiveness and climate change evaluation of alternatives over a twenty (20)-year planning period ~~the useful life of the Pproject~~. The evaluations presented must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality, and a regional treatment solution.
34. An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process. For wastewater treatment Pprojects producing sludge material, the following information needs to be identified and compared:
- a. All landfills within a 100 mile radius that accept sewage sludge;
  - b. Any composting facilities within a 100-mile radius ~~–~~accepting sewage sludge;
  - c. The potential for dedicated land disposal;
  - d. Conversion of sludge to biosolids for distribution as soil amendment or as another agricultural product; and
  - e. Ultimate disposal methods approved by the RWQCBRegional Water Boards.
45. An evaluation of the non-existence or possible existence of excessive infiltration/inflow (I/I) in the existing sewer system. If the average daily flow during periods of sustained high groundwater is less than 120 gallons per capita per day (gpcd), a Sewer System Evaluation Survey (SSES) is not required. If it is above 120 gpcd, the applicant must perform a SSES to determine whether it is cost-effective to treat or correct the I/I. If a SSES is

not submitted, funding will be ~~limit~~based on a maximum flow rate of 120 gpcd. If the peak flow during a storm event (highest three-hour average) exceeds 275 gpcd, a SSES must be completed or funding will be based on a maximum limited to the peak flow ~~rate~~amount of 275 gpcd. Cost-effective corrections under these criteria are eligible for funding. See Appendix R for further guidance on SSESs.

- ~~56.~~ Information on total capital costs, annual operation and maintenance costs, ~~as well as the estimated annual or monthly costs to residential and industrial users for all of the alternatives;~~
- ~~67.~~ A discussion of the existing population, flows, ~~and~~ loadings, and projections of the same, used to estimate the ~~twenty (20) year~~ capacity needs for the funded facilities~~treatment facilities and collection systems and forty (40) year capacity needs for interceptors and outfalls;~~
- ~~78.~~ A discussion of the anticipated eligible capacity for the Pproject, and how that capacity was derived. (see Section IX, ~~HF, of the SRF Policy~~);
- ~~8.~~ ~~A description of the Best Practicable Wastewater Treatment Technology. (For more information see 40 CFR 35.2005(b) (7)).~~
- ~~99.~~ A summary of public participation;
10. The following must be submitted for the selected alternative:
  - a. A detailed description of the selected alternative and the complete waste treatment system of which it is a part;
  - b. A summary of relevant design criteria (i.e., design flow, peak flows, daily Biological Oxygen Demand (BOD) or Chemical Oxygen Demand (COD) loadings, daily suspended solids loadings, overflow rates, detention times, sludge production, etc.);
  - c. The estimated construction and annual operation and maintenance costs and a description of the anticipated manner in which all the costs will be financed;
  - d. A summary of the cost impacts on wastewater system users. Provide the average projected monthly wastewater charges that will be passed on to wastewater users by category and the basis of the charges during the useful life of the proposed Project. Include any ineligible project costs as well as non-Project-related wastewater system costs that will be imposed on the residential users during the next five years. Also include any income generated by the project, such as income generated by the sale of recycled water;
  - e. A summary of the significant environmental impacts of the selected Pproject and any proposed mitigation measures;

- ~~f. A copy of any proposed intermunicipal service agreements necessary for the project;~~
- fg. A statement that identifies and discusses the source(s) —and the amount of unallocated potable water currently available in the Pproject service area. If the amount of potable water is less than what is needed to serve the projected population for the proposed Pproject, a plan identifying how that deficiency will be mitigated shall be presented;
- gh. A discussion of facilities which were previously funded by federal/state grants, ~~or loans, or other financing~~, if such facilities are to be repaired or replaced;
- ~~hi. Applicants must comply with the Civil Rights Act of 1964. A discussion, if applicable, where minority populations are included in the facilities planning area, the Project Report must show~~ing~~ that such areas will be served or excluded from service only for reasons of cost-effectiveness. (currently see 40 CFR Part 7). Applicants must comply with the Civil Rights Act of 1964.~~
- ij. A description of operation and maintenance requirements;
- jk. A demonstration that the selected alternative is consistent with any applicable approved water quality management plan;
- kl. A summary of public participation; and
- ~~lm. For existing facilities, the applicant must submit a~~ copy of the current adopted ~~waste discharge requirements (WDRs)~~ issued by the RWQCB Regional Water Board ~~for the wastewater facility or improvements/expansion to be constructed. If there are no existing facilities, the applicant must submit~~ if no current adopted permit exists, a copy of the tentative ~~waste discharge requirements~~ WDRs, which ~~must be submitted. The waste discharge requirements, however, must become final adopted by the RWQCB before the approval of either the plans and specifications~~ FP&S approval or the Request for Design-Build Proposal (for Design-Build Pprojects) Division approval. Division staff will track the status of the WDRs and may require additional relevant information and updates from the applicant.
11. A description of how the applicant's Pproject addresses each of the state planning priorities defined in Section 65041.1 of the Government Code and sustainable water resource management priorities. ~~These state planning priorities~~ are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities. ~~Applicants should use the most current state planning priorities as expressed in Section 65041.~~ The state planning priorities and sustainable water resources

management priorities as of the date of adoption of this Policy are as follows:

- a. To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources;
- b. To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection;
- c. To encourage efficient development patterns by ensuring that any infrastructure associated with development that is not infill supports new development that uses land efficiently, is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b), in an area appropriately planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.
- d. To encourage sustainable water resources management by ensuring that sustainable water resources measures, such as recycling wastewater, conserving water, conserving energy, and applying Low Impact Development Best Management Practices to the maximum extent practicable. Agencies that are legislatively prohibited from engaging in these activities are exempt from this requirement. Exempt agencies shall provide a statement in their Project Report citing the legislation and what activities are prohibited.

The information provided in Section IX.A. ~~10-11~~ is for information purposes only and is not intended to affect the priority or eligibility of a Pproject requesting SRFCWSRF funding.

## B. Environmental Impact Analysis

1. Final Environmental Documents must meet general requirements of the California Environmental Quality Act (CEQA). Applicants also must also meet any specific CEQA requirements that apply where a state agency and/or the applicant is the "responsible partyagency" as defined in CEQA.

In addition to CEQA requirements, Pproject applicants must follow-provide specific-documentation and-review requirements-that will allow the Division assure- to determine whether compliance with federal environmental laws (Tier I review) is necessary and has occurred. Detailed-environmental

review process guidelines including a flowchart are contained in Appendix E. Projects that can adequately document a “no effect” finding under federal environmental statutes, regulations, and policies may qualify for Tier II environmental review. Tier II Projects must still comply with CEQA, but will not involve review by federal agencies or their designated representatives through the CWSRF Program. After adequate environmental documentation is submitted, Division staff will determine whether a Tier I or Tier II environmental review is needed.

Detailed environmental review process guidelines, including a flowchart, are contained in Appendix E. At a minimum, the appropriate Environmental Documents shall discuss the items outlined in Appendix E, consistency with regional plans for wastewater treatment and water quality control, basin plans, and Section 208 plans.

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

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

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

Under some circumstances, a Project may be approved under a statutory or categorical exemption from CEQA. In these cases, a Notice of Exemption (NOE) must be filed with the County Clerk and the Governor’s Office of Planning and Research, State Clearinghouse. A copy of the signed and stamped NOE and supporting evaluation must be sent to the Division. Compliance with applicable federal environmental regulations may still be

required for exempt Projects and may involve consultation with federal agencies and/or their designated representatives.

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

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

If Division staff determines that a Tier I review is needed, Eight (8) copies of the draft Environmental Documents (the Project-specific documents and any public comments received and the responses to those comments) must be submitted to the Division for distribution to designated agencies responsible for implementing federal environmental laws. The applicant must respond directly to all comments received from Federal agencies and/or their designated representatives.

~~Under some circumstances, a SRF loan project may be approved under a statutory or categorical exemption from CEQA. In these cases, a Notice of Exemption (Notice) should be filed with the County Clerk. A copy of the Notice and supporting evaluation must be sent to the Division. Compliance with applicable Federal environmental regulations is required for exempt projects and may involve consultation with Federal agencies.~~

Tier I CWSRF Projects are subject to the provisions of the federal Endangered Species Act (ESA). Projects required to pass a Tier I review must obtain ESA Section 7 clearance from the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) prior to a Preliminary Funding Commitment. The applicant must describe the Project and Project area (such as in a Biological Assessment specific to the Project), document the potential for the presence or absence of federal special status species in the Project area and any Project effects (both direct and indirect), and identify applicable avoidance and/or conservation measures to be taken to avoid and/or minimize impacts. When adequate information has been received, Division staff will informally consult with USFWS and/or NMFS on behalf of the applicant for all federal special status species the Project has the potential to impact if no other federal agency has initiated the consultation process. Coordination with USEPA may be needed if formal consultation is required. Conditions or measures identified by USFWS and/or NMFS will be included in the financing agreement.

Tier I SRFCWSRF Projects must comply with federal laws pertaining to cultural resources, particularly specifically Section 106 of the National Historic Preservation Act. SRFCWSRF applicants must document the presence or absence of cultural resources in the Project area, their significance, and any Project effects. This documentation must be prepared by a researcher meeting federal professional standards for the type of resource in question. Section 13b of Appendix E provides details about the required information. When adequate information has been submitted to the Division by the applicant, the Division's Cultural Resources Officer will review it for Section 106 compliance, and will forward approved documents to make appropriate findings and ask for the State Historic Preservation Officer (SHPO) concurrence on those findings. The SHPO has a 30-day review period in which to comment or to concur that the process is complete. The SHPO concurrence must be obtained prior to both execution of the loan contract financing agreement and initiation of construction. Conditions identified by the SHPO will be included in the financing agreement.

~~As a minimum, the appropriate Environmental Documents shall discuss the items outlined in Appendix E. The Environmental Documents shall discuss consistency with areawide planning such as wastewater treatment and water quality control, basin plans, and Section 208 plans. In addition to submitting the final Environmental Document, the applicant must also submit to the Division copies of the resolution or similar documents certifying or adopting the document and making appropriate findings, an adopted mitigation monitoring plan, and the Notice of Determination filed with the Governor's Office of Planning and Research. If a preliminary loan commitment is approved, the Division will prepare a Notice of Determination and file it with the Governor's Office of Planning and Research.~~

~~Applicants must also adopt a mitigation monitoring plan for agreed upon mitigation measures. Compliance with this plan will be a condition of the loan contract.~~

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

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

5. The State Water Board will make its own CEQA findings and determinations based on the adequacy of the lead agency's documents. If a Preliminary

Funding Commitment is approved, the Division will prepare its own NOD and file it with the Governor's Office of Planning and Research, State Clearinghouse.

C. Water Conservation

The ~~SWRCB~~State Water Board will not execute a ~~loan contract~~financing agreement for a ~~P~~project until the applicant has adopted a water conservation program consistent with local ordinances and authorities. In lieu of adoption of an independent water conservation program, the applicant may become a signatory to the "Memorandum of Understanding Regarding Urban Water Conservation in California" September 1991, California Urban Water Conservation Council, which may be modified to suit local conditions.

The Urban Water Management Planning Law, Water Code, Part 2.6, Section 10610 et.seq., requires every urban water supplier to prepare and adopt an Urban Water Management Plan that includes specific elements. Urban water suppliers, either publicly or privately owned, providing water for municipal purpose either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually are subject to this Law. Agencies may submit an Urban Water Management Plan instead of a Water Conservation Program in meeting the water conservation requirement (Water Code Section 10653).

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

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

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

D. General Planning

If the applicant is responsible for adopting the ~~g~~General ~~p~~Plan(s) for the area affected by a proposed ~~P~~project, the Division may not give ~~facilities plan approval~~EPA for the ~~P~~project until the applicant's authorized representative has certified that the applicant has adopted the "land use" and "housing" elements of its ~~g~~General ~~p~~Plan and that the ~~P~~project is consistent with the adopted ~~g~~General ~~p~~Plan.



If the applicant is not responsible for adopting the gGeneral pPlan(s) for the area affected by the Pproject, then the Division may not give ~~facilities plan approval~~FPA until the applicant's authorized representative certifies that at least seventy-five (75) percent of the area affected by the Pproject includes cities and counties with adopted land use and housing elements. The applicant's authorized representative will also document that the applicant notified the agency(ies) responsible for adopting the General pPlan(s) and provided a reasonable opportunity to comment on the Pproject's consistency with the General pPlan(s). The applicant's authorized representative will certify that the applicant considered those comments during development of the Pproject.

#### E. Revenue Program-Credit/Legal Review

~~a. All recipients of funding assistance shall create a dedicated WCRF for expansion, major repair, or replacement of their wastewater treatment facilities.~~

~~b. The SRF loan contract will not be enacted until an ordinance creating the WCRF is enacted by the local governing body.~~

~~c. The recipient shall deposit sufficient funds to build up the WCRF at a minimum rate of one-half of one (0.5) percent of the SRF loan amount each year for a period of ten (10) years.~~

~~d. All interest earned on deposits to the WCRF shall remain in the WCRF for the uses specified below. The recipient shall replace any amounts expended from the WCRF by depositing at a minimum annual rate of ten (10) percent of the expended amount.~~

~~e. The recipient's unused bonding capability for the wastewater enterprise may be used to offset, dollar for dollar, the required cash deposits to the WCRF.~~

~~f. Unused bonding capability means, with respect to each SRF loan contract issued CWSRF after January 21, 1993, an amount equal to unissued bonds or other indebtedness authorized either by vote of the local electorate or by provisions of local or other law under which the borrower would be legally permitted to issue such bonds or other indebtedness without approval by the local electorate or by any other public entity.~~

~~The amounts required to be deposited in the WCRF may be reduced by any amounts held and not previously allocated for the purposes of this calculation. The amounts may be held in any fund or account established pursuant to a resolution or indenture of a borrower pursuant to which any bonds or other indebtedness have been issued and are outstanding, which amounts may be used for the purposes for which the WCRF is established.~~

~~g. Money deposited in the WGRF shall be available for the costs for planning, design, and construction of capital improvements (See IX.D.1.a. above) to the wastewater treatment facilities.~~

~~h. The recipient shall prepare and submit a report on WGRF activities and fund status beginning five (5) years after the Division's approval of the final Revenue Program. A report shall be due every five (5) years for the life of the loan contract.~~

~~Failure to meet the provisions of this Section could result in the immediate recall and repayment of all SRF funds disbursed to the recipient.~~

~~2. \_\_\_\_\_~~

~~The applicant will be required to identify and make projections of the amount of revenue available from specific sources necessary to repay the SRF loan.~~

~~A draft Revenue Program must be prepared and submitted prior to Facilities Plan Approval. A loan contract will not be executed until the Division has approved the draft Revenue Program. The draft Revenue Program must include a draft ordinance or resolution committing a source or sources of funds for repayment. The draft Revenue Program shall be updated as appropriate and submitted with the final plan and specifications.~~

~~As indicated at the time of the preliminary loan commitment, the applicant will be required to identify a "dedicated" source of revenue to repay the loan. Revenue will be considered dedicated when the applicant passes an ordinance or a resolution committing a source, or sources, of funds for repayment. The resolution, or ordinance, dedicating a source of funding for repayment must be adopted by the applicant and approved by the Division before the loan contract is issued.~~

~~3. \_\_\_\_\_~~

~~A final Revenue Program, a draft rate ordinance, and an adopted sewer use ordinance must be approved by the Division prior to ninety (90) percent disbursement of the loan funds. The final approved Revenue Program should be reviewed periodically during the useful life of the project and modified as necessary.~~

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

The process for completing the credit review is as follows:

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

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

1. Election/Proposition 218

The applicant shall submit evidence that the revenue needed has been approved for the project pursuant to applicable election or Proposition 218 procedures or a legal opinion explaining why an election or Proposition 218 procedures are not applicable. The net revenue to debt coverage shall be at least 1.20 to 1.00 for all senior debt and 1.10 to 1.00 for the highest year’s debt service after completion of project construction. If the necessary revenue has not been approved, a financing agreement will not be approved.

2. Dedicated Source(s) of Funds

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

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

Ordinance or resolution language equivalent to the following example is

acceptable:

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

3. Financial Statements and Security

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

4. Litigation

The applicant shall describe any pending or anticipated litigation and contractual or ratepayer/taxpayer disputes that may detrimentally affect the applicant's payment source or the ability of the applicant to agree to or pay the CWSRF financing.

5. Existing Indebtedness

- a. For the purposes of the following, "existing debt" means the applicant's existing debt that relies on the same pledged revenue source as the applicant is pledging for payment of the CWSRF financing.
- b. The applicant shall submit a schedule of existing debt. This schedule will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). The schedule will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.
- c. The applicant shall submit a letter from the Agency's bond counsel (in certain circumstances local counsel will be

adequate), citing relevant provisions in each of the applicant's existing debt documents listed in the schedule (other than CWSRF debt), that would affect the ability of the Agency to agree to and meet its obligations under the new, anticipated CWSRF financing agreement. If the applicant has no other debt (except other CWSRF debt), the Agency's Authorized Representative must provide a letter stating this.

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

#### 6. Future Capital Needs

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

#### IX.F. Other Submittals

- a. Legal Authority: The applicant shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant's legal counsel for follow up questions from State Water Board legal counsel.
- b. Tax Questionnaire: The applicant shall provide a completed, signed tax questionnaire to assess the Agency's ability to receive CWSRF funds from tax-exempt revenue bond financing sources.
- c. Joint Powers Agreement: The applicant shall provide a copy of any Joint Powers Agreement for the proposed Project with a summary explanation of the shared financial, construction, and management responsibilities of each Agency.
- d. Agency Resolution(s): Agency Resolutions are required authorizing the application, the financing amount (at the option of the applicant), Local Match (if local match financing is requested), and designating an Authorized Representative (named or position title).
- e. Legal Opinion-Access and Ownership of Land: Applicant shall provide an opinion from competent counsel addressing whether the applicant has the legal authority to access, construct, operate, and maintain the proposed Project for the life of the CWSRF financing. The Division prefers to receive this Legal Opinion with the application, however, the Division must receive it prior to Approval-To-Award to proceed with financing agreement execution.

## FG. Eligible Project

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

### 1. Eligible

- a. Treatment facilities, including new collection systems in existing developed areas within the service area, ~~and~~ alternative treatment facilities such as leachfields, mound systems, and constructed wetlands, purchase of lands, rights-of-ways, and easements for land that will be an integral part of the treatment process or will be used for sludge disposal, and equipment or systems to reduce energy use or reduce the effects of climate change etc.;
- b. Reserve capacity for treatment plants and pipelines; (See ~~Section IX.F below~~ for details);
- c. Reasonable administration and laboratory building space directly related to the operation of the eligible facilities;
- d. Process control systems;
- e. Mitigation measures (except for land) mandated by State and/or ~~F~~ederal agencies;
- f. Eligible Change Orders approved by the Division, not to exceed the Approval-to-Award amount, provided the recipient documents eligible positive and negative Change Orders;
- g. Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the Water Recycling Funding Program (WRFP) Guidelines in Appendix D;
- fh. On-site solids handling systems necessary to meet waste discharge permit requirements; ~~(Includes systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal);~~
- gi. Stationary and mobile equipment which are an integral part of the wastewater or sludge handling process such as front loaders for sludge drying beds, injection equipment for dedicated land disposal sites, and compost windrow turners. Equipment must be confined to the treatment plant or disposal site owned by the recipient;

- h*j*. Allowances for planning, design, construction and prime engineering, and administration;
- h*k*. Special equipment necessary to maintain the eligible treatment facilities, including the manufacturer's list of spare parts;
- h*l*. Necessary insurance related to the construction contract; ~~and~~
- h*m*. Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system.
- n. Recycled water systems (not including gray water systems); and
- o. Water conservation measures:
  - 1. Installation of water supply meters;
  - 2. Plumbing fixture retrofits or replacements;
  - 3. Use of efficient landscape irrigation equipment; and
  - 4. Public water conservation education programs.

## 2. Ineligible

- a. All land, easements, and rights of way, except purchase of lands, rights-of-ways, and easements for land that will be an integral part of the treatment process or will be used for sludge disposal;
- b. Contingencies and honorariums;
- ~~c. Construction change orders and claims;~~
- h*d*c. House laterals for collection systems and any in-house facilities;
- h*e*d. Engineering costs included as part of the construction bid for other than Design-Build projects;
- h*e*. Decorative items (art work, sculptures, reflective ponds, fountains, etc.);
- h*f*. Solids handling facilities that perform pasteurization, co-generation, conditioning, heat drying, thermal reduction, and facilities for packaging or distributing biosolids;
- h*g*. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
- h*h*. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;

- ji. All other items not included in the construction contract except allowances; and
- kj. Replacement of previously grant funded facilities are ineligible except for the following specific cases:
  - (1) Where an amendment to a basin plan adopted by a RWQCBRegional Water Board requires upgrading of specific treatment systems or technology to achieve a mandated enhanced level of treatment, and the replacement of previously grant funded facilities is necessary to achieve the mandated enhanced level of treatment required by the amendment;:-
  - (2) Where a proposed water recycling Pproject ~~which that~~ meets the definition of an eligible water recycling Project contained in Section I.D. (eligible water recycling project) ~~of the -most recently amended (WRFPP)-~~ Guidelines (See Appendix D) adopted by the SWRCBState Water Board on April 17, 1997October 21, 2004, most recently amended; and which is proposed to use recycled water to replace a bonafide current or proposed beneficial consumptive use of potable water; and where replacement of previously grant funded facilities is necessary to install the recycling Pproject;:-
  - (3) Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable operation of the facility.
  - (4) Notwithstanding any other provisions of this policy, the SWRCBState Water Board may consider granting an exception to this policy in the event that the SWRCBState Water Board, after a meeting, makes a finding that the petitioner suffers from severe hardship or unique circumstances.

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

#### GH. Capacity Funding Limitations

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



Eligible capacity for ~~POTWs treatment plants and collection systems~~ will be up to a period of twenty (20) years from the estimated ~~Project completion date of initiation of construction~~. For ~~P~~projects with a design capacity greater than 20 years, eligible and ineligible costs shall be determined on an incremental basis. Eligible capacity for multiple phased ~~P~~projects shall be determined on a case by case basis.

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

Eligible capacity shall be calculated by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the per capita flow shall be based on the existing population and the measured flow. The flow thus calculated will be deemed to include all the eligible ~~P~~project flows, (residential, commercial, existing ~~F~~federal facilities, existing industrial, and infiltration/inflow). Eligible capacity will be determined at the facilities planning stage.

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

#### H. Population or Flow Projections

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

#### I. Industrial and Federal Facilities

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

#### J. Preliminary ~~Loan-Funding~~ Commitment

The Division may request a Preliminary ~~Loan-Funding~~ Commitment from the State Water Board after the Division has issued ~~facilities plan approval FPA~~ and the applicant has concurred with the ~~FPA eligible project~~. The loan funding application must be submitted before the ~~P~~project is considered for the preliminary loan-funding commitment. The preliminary loan-funding commitment will expire at the ~~end of the time period specified in the approval document unless the specified deadline is met. The specified deadline will be the date the applicant submits biddable plans and specifications to the~~

~~Division, or another appropriate deadline. The Division may approve up to a ninety (90) day extension for a good cause date established by the Division. Following the preliminary funding commitment and prior to design completion, the applicant is required to advise the Division whether the proposed Project will be completed using Design-Build or the Design-Bid-Build (normal) method of construction. For routine, noncontroversial Projects on the Statewide List, the Deputy Director of the Division or designee is authorized to make preliminary funding commitments. For any Project, including non-routine, controversial Projects, the Deputy Director or designee may approve up to a one-hundred and twenty (120) day extension of the Preliminary Funding Commitment for good cause.~~

~~K~~L. Design-Build Projects

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

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

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

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

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

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

LM. Technical Review and Panel Selection Requirements For Design-Build Projects

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

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

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

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

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

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

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

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

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

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

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

## X. PLANS AND SPECIFICATIONS

### A. Review Procedures

The primary focus of the review of the ~~F~~final ~~P~~plans and ~~S~~specifications (~~P&S~~) will be to determine if the design is consistent with the facilities described in the ~~Facilities Plan approval FPA~~ letter, if the proposed ~~P~~project, in concept, will meet ~~discharge requirements WDRs~~, and if it will comply with applicable ~~F~~federal and State ~~loan CWSRF p~~Program requirements. The ~~final plans and specifications~~~~Final P&S~~ must be approved by the Division and the applicant must agree to the eligibility determinations and performance certification standards prior to issuance of the ~~loan contract~~~~financing agreement~~.

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

For Design-Build ~~P~~projects, the review and approval of the design of the ~~P~~project ~~will~~ ~~not~~ be carried out in a three-phased approach. The first review will be done after the RFQs are submitted to the Division to determine if the evaluation and selection process used for pre-qualifying bidders is fair and equitable and that the selection criteria is described accurately and completely. The second review will be after the RFP is submitted to the Division to determine the ~~P~~project component eligibility; ~~to establish P~~project performance standards; and to verify that the proposed ~~P~~project is consistent with the facilities described in the ~~Facilities Plan approval FPA~~ letter. The third review is after the applicant has selected the successful low bidder and the ATA is submitted to the Division. Design review during the third phase will be limited to assuring that the ~~P~~project being designed and constructed is consistent with the facilities described in the Facilities Plan and is the same as described in the RFP approved by the Division, and also to check if the proposed ~~P~~project, in concept, will meet ~~discharge requirements WDRs~~, and to assure its compliance with ~~F~~federal and State ~~loan~~ programs' constructability and biddability requirements.

### B. Value Engineering

Applicants with estimated total ~~P~~project ~~construction~~ costs greater than ~~\$3540~~ million must conduct a Value Engineering (VE) study. VE studies are also recommended for ~~P~~projects costing less than ~~\$40-35~~ million because of the potential cost savings and design improvements resulting from the VE process. An extra allowance amount will be provided for applicants conducting VE studies for ~~P~~projects costing less than ~~\$3540~~ million. (See Appendix I Allowances).

The VE study report shall be submitted with the ~~F~~final ~~plans and specifications~~~~P&S~~. The VE study report shall describe all the VE recommendations. If any VE recommendations are not being implemented,

the submittal shall discuss the reasons for rejection. Applicants should consult with ~~the Division's design staff assigned Project Manager~~ at the ten (10) percent design stage regarding VE requirements. (See ~~SRE CWSRF~~ Guidance Memorandum No. 3, Appendix C).

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

### C. Project Performance Standards

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

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

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

Project performance standards shall be based on the Regional Water Board's ~~w~~Waste ~~d~~Discharge ~~r~~Requirements ~~WDRs~~. The standards will describe ~~monitoring data necessary for ~~P~~project certification, including sampling locations, frequency of sampling, flow conditions, duration of sampling, and testing procedures for mechanical equipment.~~ For non-discharging ~~P~~projects (such as I/I correction and pump stations), the ~~P~~project performance standards include the elimination of overflows and reduction of infiltration/inflow/I to the levels specified in a SSES.

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

## ~~D. Loan Contract~~

### ~~1. Normal projects~~

~~The loan contract will be issued after final plans and specifications are approved and all other program requirements have been satisfied. The loan amount will be based on the engineer's estimate of the eligible project costs. The loan contract will be amended once at the ATA to reflect the actual project costs, subject to the 50 percent cost increase limit under Section XV.D.~~

### ~~2. Design-Build Projects~~

~~For Design-Build projects, the loan contract will be issued after the preliminary loan commitment and after the applicant's RFP has been reviewed and approved by the Division. The loan contract will be amended after the Division issues the ATA that reflects the actual eligible project costs.~~

## ~~DE. Labor Wage Provisions~~

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

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

~~MBE/WBE is applicable only to Tier I Projects and does not apply for Tier II Projects (see Section IX.B). The recipient must insert the following forms in its contract bidding documents: (1) Contract Provisions Relative to MBE/WBE; (2) MBE/WBE Self Certification ~~(Attachment A)~~; and (3) Selected MBE/WBE Subcontractors Form ~~4700-5 (Attachment B)~~. ~~Contact your project manager for the latest version.~~ Furthermore, ~~a~~ pre-bid conference with the prospective bidders is strongly encouraged to explain the MBE/WBE "positive effort" requirement.~~

~~The recipient must submit three-six MBE/WBE forms with the ATA request package. These are: (1) "Good Faith Effort" Solicitation listing; (2) "Good Faith Effort" Bids Received list; (3) Attachment A, Subcontractor Self Certification; (4) Attachment B, Selected MBE/WBE Subcontractors (submitted with the bid); ~~(2) Attachment A; and (35)~~ Summary of Bids Received; and (6) the applicant's MBE/WBE Positive Effort Certification (see Appendix K, MBE/WBE Compliance Guidelines). ~~In the event the bidder does not meet the MBE/WBE fair share objectives, additional documentation must be submitted to the Division by the recipient to demonstrate that the low bidder complied with the positive effort steps listed in the Contract Provisions for MBE/WBE Utilization.~~~~

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

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

## XI. COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES

~~If the analysis per Section IX.B results in a Tier I determination then recipients will be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in this section. If a CEQA analysis per Section IX.B results in a Tier II determination, then recipients will NOT be required to comply with MBE/WBE and other applicable federal statutes and authorities shown in Section XI. In the January 28, 1988 Final Guidance for State Revolving Funds, EPA listed a number of other Federal laws and authorities that must be followed for activities supported with SRF funds directly made available by capitalization grants. Appendix M contains a current list of these other laws and authorities with a sample certification form.~~

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

## XII. ALLOWANCES

### A. Normal Allowances

A fixed amount of ~~loan~~ funds will be provided to the ~~loan~~ recipient to partially offset costs for planning, design, construction management, administration, and prime engineering. An additional design allowance (see Appendix I) is included for applicants doing VE studies for ~~P~~ projects costing less than ~~\$3540~~ million. For ~~P~~ projects costing more than ~~\$3540~~ million, the cost of the VE study is included in the design allowance. Payment of the planning and design allowances will be made on actual costs incurred and may be requested as soon as the ~~loan-contract~~financing agreement is ~~issued~~executed. The allowance amounts will be determined from the eligible construction costs at the ATA stage.



B. Design-Build Allowances

The allowance for Design-Build Projects will be determined by entering the allowance tables (See Appendix I) at the amount proposed by the Design-Build contractor. The amount for design will be multiplied by 80 percent and that amount deducted from the Design-Build contractor's proposed amount. The resulting amount (construction cost) will be used to reenter the tables for all allowances. ~~To the planning allowance will be added 20-Twenty~~ percent of the design allowance calculated will be added to the planning allowance. ~~and~~ ~~n~~No allowance will be allowed for design. For Design-Build Projects with construction costs under \$~~3510~~ million, the value for VE will also be added to the planning allowance. For example: the Contractor's bid amount for a treatment plant is \$~~3510~~ million. The Design Allowance for \$~~3510~~ million is \$~~1,438,395,490,070~~. Eighty percent is \$~~1,150,716,392,056~~. The construction cost is \$~~33,849,2849,607,944~~ (~~\$35,000,00010,000,000~~-~~\$1,150,716,392,056~~).

The allowances for \$~~33,849,2849,607,944~~ normal Project are:

Planning	<u>\$ 666,065,242,926</u>
Design	<u>\$1,430,442,473,079</u>
Construction <u>Management</u>	<u>\$2,997,516,853,125</u>
Administration	<u>\$ 304,644,86,471</u>
Prime Engineering	<u>\$ 78,055,25,669</u>
Value Engineering	<u>\$ 350,000</u>

For a Design-Build Project, the allowances are:

Planning	<u>\$ 987,153,367,542</u> [ <u>\$666,065,242,926</u> +(20% $\times$ <u>\$1,430,442,473,079</u> )+ <u>\$350,000</u> ]
Design	<u>\$ -0-</u>
Construction <u>Management</u>	<u>\$2,997,516,853,125</u>
Administration	<u>\$ 304,644,86,471</u>
Prime Engineering	<u>\$ 78,055,25,669</u>

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

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

### ~~XIII. LOAN APPLICATION AND CONTRACT AWARD~~

~~The loan application should be submitted with the Facilities Plan. Following the preliminary loan commitment and prior to design completion, the applicant is required to advise the Division whether the proposed project would be completed using Design-Build or the design-bid-build (normal) method of construction. Depending on the choice of the construction method, the Division will prepare a loan contract checklist to assure all program requirements have been met before award of loan assistance. A sample of the loan application, loan contract and checklist are contained in Appendix N. The loan contract for normal projects will be awarded after the final plans and specifications are approved based on the engineer's estimate of the eligible project costs. However, for Design-Build projects, the loan contract will be awarded after the RFP is approved by the Division based on the engineer's estimate for the eligible project.~~

### ~~XIIIV. APPROVAL TO AWARD (ATA)~~

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

~~The Division will use the lowest acceptable bid to determine the final eligible contract amount. The Division will also review the ATA request package to assure that both the recipient and its contractors have complied with the MBE/WBE positive effort requirements.~~

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

~~The Division will use the lowest acceptable bid to determine the final eligible loan contract financing agreement amount. The Division will also review the ATA request package to assure that both the recipient and its contractors have complied with the MBE/WBE positive effort requirements. For Design-Build Projects, the financing agreement will be based on the Design-Build proposal selected by the recipient.~~

~~Neither the EPA nor the SWRCB will be involved in resolving bid disputes. Bid dispute resolution will be the sole responsibility of the recipient. The ATA will not be issued until all bid disputes have been resolved by the recipient. The Completion of Construction date will be established at the time of the ATA for the purpose of determining the recipient's payment schedule. The date will be established by mutual agreement between the Division and the recipient. The Initiation of Operation date will be established in the same manner and starts the one-year Certification Period (see Section XVII.B and Appendix J for more details).~~

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

#### **XIV. AMENDED LOAN CONTRACT FINANCING AGREEMENT**

##### **A. Interest Rate and Service Charge**

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

The interest rate for CWSRF financing agreements is set pursuant to Subsection 13480(b)(1) of the Water Code shall be half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Master File is determined to be complete. If the bond rate is not a multiple of 0.1, then the Division will round up to the nearest 0.1 percent, when the initial loan contract is issued. (See also Subsection 13478 of the Water Code for the local match program). Where a service charge is included in the financing, the combined interest and service charge shall be equivalent to half of the most recent general obligation bond rate obtained by the State Treasurer's Office, rounded up to the nearest 0.1 percent.

##### **~~B. Final Loan Amount~~**

~~The amended loan contract amount will be based on the sum of the lowest acceptable bid costs of the eligible construction project, and the appropriate allowances for planning, design, construction, prime engineering, and administration.~~

~~The final eligible project cost will be determined at the ATA stage based on the date for initiation of construction.~~

##### **~~C. Contract Initiation~~**

~~The recipient will have a maximum of six (6) months from the effective date of the loan contract to award the prime construction contract. An extension of up to 90 days may be granted by the Division in the event of unusual circumstances.~~

~~At the time of the submittal of the ATA package, the recipient must demonstrate that an amount equal to at least five (5) percent of the estimated project costs will be available for project contingencies. The contingency amount will not be eligible for loan assistance.~~

BD. Cost Increases

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

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

CE. Future Local Debt

1. The applicant's future debt may not be senior to CWSRF debt. The SRF loan contract will contain a provision requiring the sale of applicant's future local debt to may be on parity with, or subordinate to, the SRF CWSRF debt unless if all of the following criteria conditions are met.:

- a1. i. The applicant's recipient's non-subordinate debt is rated "A", or higher, by at least two nationally recognized rating agencies; or
- ii. The Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its non-subordinate debt; or
- iii. The Division determines that requiring future debt to be subordinate to the CWSRF debt will unduly restrict the agency from obtaining future debt.

and

b2. The recipient's applicant pledges that net revenues pledged available to pay the SRF loan all senior debts relying on the pledged revenue source are at least 1.24 times the current highest year's debt service and net revenues pledged to pay all debts are at least 1.1 times the highest year's debt service on SRF loans; and.

~~3. The applicant agrees to pay the 20 percent state match amount for their loan in return for a zero interest loan.~~

DF. Effective Date

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

**XVI. LOAN DISBURSEMENTS**

Disbursements to recipients will be subject to ~~EPA~~EPA requirements and/or limitations. ~~Costs Requests for Disbursement~~ may be submitted ~~for payment on a monthly basis~~ at any time after execution of the financing agreement.

Costs submitted to the Division ~~for payment~~ must be currently due and payable to the ~~P~~project construction contractors. It will not, however, be necessary for the recipient to have actually paid the costs before requesting ~~payment~~ Disbursements under the ~~loan contract~~ financing agreement.

A. Loan Disbursement Requests

The recipient will receive a copy of the ~~SRF Request for Disbursement form from the Division's Disbursement unit Request Form No. 260 or Request for Loan Disbursement Form No. 261 for zero interest loans.~~ (See Appendix P) upon execution of the ~~loan contract~~ financing agreement. The recipient will be responsible for completing columns C- (Costs Incurred to Date) and E- (Costs Claimed for ~~Payment~~ Disbursement to Date). The recipient is also responsible for the certification of expenditures by the authorized representative. A copy of each processed Disbursement ~~payment~~ request will be sent to the recipient to show the amount disbursed by the Division. Specific instructions for requesting ~~D~~ disbursements are also included in Appendix P.

B. Allowance Requests

A request for disbursement of the planning and design allowances can be submitted as soon as the ~~loan contract~~ financing agreement is ~~issued~~ executed. The total amount for all the allowances will also be shown on the ~~SRF~~ Disbursement Request Form No. 260/~~261~~ sent to the recipient. Recipients must certify that planning and design work has been completed and that claimed costs were incurred. Unless requested by the Division, it is not necessary to include invoices or other documentation for the disbursement of allowances. However, recipients must keep records of all incurred costs claimed. The final allowance amounts will be based on the eligible low bid costs and will be included in the ~~amended loan contract~~ financing agreement. ~~Any overpayment of allowances based on the initial loan contract, which have~~

~~already been paid, will be subtracted from subsequent requests for disbursements.~~

C. Construction Progress ~~Payment-Disbursement~~ Requests

The recipient will receive a copy of the ~~SWRCB~~State Water Board Construction Contractor Spreadsheet Form No. 259 after the ATA has been issued by the Division ~~and the amended loan amount has been agreed upon.~~ Instructions for completing this form are ~~also~~ in Appendix P.

When requesting disbursement for construction, the recipient must include a copy of the Construction Contractor's Pay Estimate along with completed Form Nos. 259 and 260/~~261~~ (See Appendix P for detailed instructions). The Contractor's Pay Estimate must be itemized by bid item or show a relationship between the Contractor's Pay Estimate and the bid items. The estimate must be signed by the contractor and the authorized representative. The allowance will be paid as costs are incurred. The ~~loan~~ disbursement will be based on the amount of money currently due and payable to the contractor for eligible bid items, plus costs incurred for engineering and administration, minus any amounts previously paid by the Division. The recipient should assure that adequate local funding is available to pay the contractor in case the ~~loan~~ disbursement is not processed before payment to the contractor is due.

D. Division Assistance

If you need assistance, or have any questions regarding submittal of a request for a ~~loan~~ disbursement, please contact the Chief Disbursements Unit of the Financial and Administration Unit at (916) 341-~~58205715~~.

**XVII. CONSTRUCTION**

A. Preconstruction Conference

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

~~B~~A. Construction Inspections

1. Interim Inspections

The Division may conduct interim inspections during construction.

2. Final Inspections

The Division may conduct a final construction inspection.

G. Completion of Construction Date

~~The completion of construction date will be established for the purpose of determining the loan repayment schedule. The date will be established by mutual agreement between the Division and the recipient.~~

DC. Status Reports

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

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

**XVIII. OPERATION**

A. Final Project Inspection

~~After the completion of construction date is established, the recipient and the Division will mutually agree on the initiation of operation date.~~ The ~~i~~nitiation of ~~e~~Operation date is the start of the one-year ~~P~~project performance certification period. During the certification period, the Division will conduct a Final Project Inspection to determine if the treatment facilities are being maintained and operated satisfactorily, and are capable of meeting performance standards. The Division will prepare a final project inspection report, which will identify areas of operational deficiencies, if they exist.

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

B. Project Performance Report and Certification

One year after ~~i~~nitiation of ~~e~~Operation, the recipient is required to certify that the project meets the project performance standards and must submit a project performance ~~certification~~ report and certification. The project performance ~~certification~~ report should summarize the data collected during the one-year project performance period and discuss the project's current and future ability to meet the project performance standards. The project performance ~~certification~~ report should also address any items noted as

deficient in the final project inspection report. ~~The~~ Division will approve the certification of the project, if appropriate, at the end of the one-year certification period. A detailed outline of the ~~P~~project ~~P~~performance ~~R~~report requirements and certification form for various types of projects can be obtained from the Division.

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

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

At the time of the first billing, the Division shall issue a notification and request for technical report pursuant to Water Code section 13267, and may use any other legal means to obtain the project performance report and certificate or corrective action report from the recipient.

Further information on project performance certification is included in Appendix J.

## **XVIII.** **RECORD KEEPING REQUIREMENTS**

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

- Accounts accurately depicting amounts received and expended for the project, including all funds received from the SRFCWSRF;
- Program income data; and
- Total cost of the project, including allowance costs.



Invoices must be maintained for a period of at least three years after submittal and acceptance of an affirmative Project Performance Certification. All other records must be kept for the life of the ~~loan~~financing agreement.

## **XIX. REPAYMENTS**

Interest and service charge if applicable, will accrue on all ~~loan~~ disbursements as of the date each disbursement is made. A revised ~~repayment~~ schedule will be issued by the Division after the recipient submits an approvable final disbursement request.

The Division will prepare a ~~repayment~~ schedule that includes:

- The interest rate and service rate, if applicable;
- Accrued interest;
- Service charges, if applicable;
- Amount of ~~dollars loaned~~CWSRF funding;
- The final principal amount of the ~~loan due~~financing agreement including accrued interest and service charge, if applicable; and
- A complete amortization table.

The first annual ~~loan~~ repayment will be due one year following the ~~C~~eompletion of ~~C~~eonstruction date, as set by the Division under Section ~~XVII.CXIII~~. ~~The Loans and most financing agreements~~ will be fully amortized no later than twenty (20) years after ~~e~~eompletion of ~~e~~eonstruction. The amount to be ~~repaid~~ will include the amount ~~loaned-financed~~ plus accrued interest and service charge, if applicable. Extended term financing agreements will be completed no later than thirty (30) years after Completion of Construction and are subject to conditions or restrictions as set forth in USEPA's approval. As a courtesy, tThe Division will normally send a ~~repayment~~ notice approximately thirty (30) days before the date each ~~repayment~~ is due, but prompt ~~repayment~~ remains the responsibility of the recipient.

~~A penalty of one-tenth of one percent (0.1%) per day on the amount due will be assessed for late repayment. A ten (10) day grace period will be allowed. However, if the repayment is not received by the end of the grace period, the penalty will be assessed from the repayment due date. Any penalties collected will be deposited in the SRF account to be made available for SRF assistance. The recipient will have a ten day grace period, after which time a penalty in the amount of costs incurred to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, lost interest earnings, staff time, bond debt service default penalties, and other costs incurred. Any such penalties collected will be deposited in the CWSRF account.~~

Penalties assessed will not change the principal balance of the ~~loan~~ ~~contract~~financing agreement. Such penalties will be treated as a separate ~~account~~ receivable in addition to the annual ~~repayment~~ due.

All ~~repayments~~payments are to be sent to:

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

## **XXI. BOARD RESERVATION OF AUTHORITY**

Prior to the signing of any ~~loan contract~~financing agreement, the SWRCBState Water Board reserves the right to modify this SRFCWSRF Policy as necessary to provide for effective and equitable use of SRFCWSRF funds, including:

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

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

## **XXII. ELIGIBILITY DISPUTES**

~~Any dispute, which is not otherwise resolved, shall be referred to the Chief of the Division, or his/her delegate, for decision. The decision by the Chief of the Division, or his/her delegate, shall be reviewable by the SWRCB, at the option of the SWRCB.~~

In the event that a Division Staff Decision is not acceptable, the applicant or recipient may appeal within 30 days to the ~~Chief Deputy Director~~ of the Division or designee, for a final Division Decision. If the applicant or recipient is not satisfied by the final Division Decision, the applicant or recipient may appeal to the SWRCBState Water Board within 30 days. The Office of the Chief Counsel of the SWRCBState Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the SWRCBState Water Board's Executive Director and all the SWRCBState Water Board Members. Upon the motion of any SWRCBState Water Board Member, the SWRCBState Water Board will undertake to review and resolve the dispute in the manner determined by the SWRCBState Water Board. Should the SWRCBState Water Board determine not to review the Final Division Decision, this decision will represent a final agency action on the dispute.

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