

OPERATING AGREEMENT

BETWEEN THE

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

AND THE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

FOR ACTIVITIES AND FUNCTIONS

IN MANAGING THE

STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

November 2012

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I. INTRODUCTION

A. PURPOSE

The purpose of this Operating Agreement (OA) is to provide a framework within which the United States Environmental Protection Agency (EPA) and the State of California (State) can administer the overall CWSRF program in California as prescribed in 33 U.S.C. §§1381 - 1386.

B. SCOPE

The State intends to administer the program using applicable state and federal laws, regulations, and guidelines. The OA describes the administrative and technical procedures that will be implemented by the State, and the review, audit, and oversight procedures that will be used by EPA on an on-going basis. Information that changes from year to year or has not been incorporated in the OA shall be contained in the annual Application for Federal Assistance and Intended Use Plan (IUP).

C. DEFINITIONS

Annual Report means the report prepared pursuant to 33 USC § 1382 and 40 CFR § 35.3165.

ASAP means the Automated Standard Application for Payments (ASAP).

Cash Draw means the transfer of funds from the U.S. Treasury to a designated State account, pursuant to a State request for such transfer, and in accordance with applicable rules for such transfer.

CEQA means the California Environmental Quality Act.

CIEDB means the California Infrastructure and Economic Development Bank.

CWA means the Clean Water Act, which means the Federal Water Pollution Control Act, 33 U.S.C. §§1251 - 1387.

CWSRF means the Clean Water State Revolving Fund Program authorized under 33 U.S.C. §§1381 - 1386 and 40 CFR Part 35, and all ancillary activities necessary to maintain and support program operations.

Disbursement or Cash Disbursement means payment by the State for costs incurred by the financing recipient for project construction.

EPA means the U.S. Environmental Protection Agency, Region IX.

Grant Payment means an increase of the State draw limit or ceiling from the federal ASAP.

IUP means Intended Use Plan as described under Section 606(c) of the CWA, 33 U.S.C. §1386 (c) and 40 CFR § 35.3150.

Payment means EPA action to increase the federal ASAP, or other federal payment mechanism, as modified, ceiling amount pursuant to the "payment schedule" in the grant agreement.

POTW means publicly owned treatment works. Treatment works are defined under Section 212 of the CWA, 33 U.S.C. §1292 (2) (A).

RA means EPA's Regional Administrator for Region IX.

SERP means the State Environmental Review Process described in the Water Pollution Control State Revolving Funds Program Implementation Regulations: 40 CFR § 35.3140.

State means the State Water Resources Control Board, its officers, staff, and agents, and other offices and agencies within State government with which the State Water Resources Control Board will coordinate various program activities, including but not limited to the State Controller's Office (SCO), which will issue checks to assistance recipients.

State Water Board means the State Water Resources Control Board.

40 CFR Part 35 means the EPA implementing regulations for the CWSRF program.

40 CFR Part 31 means the EPA grant regulations which govern grants and cooperative agreements issued to States, Tribes, and local governments. Many of the provisions of 40 CFR Part 31 apply to CWSRF Program grants.

II. RESPONSIBILITIES

A. STATE

1. General

The State is responsible for administering the CWSRF program in conformance with federal and state laws, regulations, and guidelines to fund construction of wastewater treatment facilities, nonpoint source control, and estuary protection projects. The State is also responsible for developing and implementing rules and procedures to meet federal and state laws and regulations, preparing required reports and audits, and providing adequate staffing to effectively administer the CWSRF program.

2. Specific

a. Intended Use Plan (IUP)

The State will prepare a plan identifying the intended uses of the funds in the CWSRF and describing how those uses support the goals of the CWSRF. The IUP must contain a list of the projects from the State's adopted project Priority List for which the State expects to provide assistance. The IUP must be prepared at least annually. The IUP must be made available for public comment and review before the capitalization grant agreement can be submitted to EPA.

b. CWSRF Management

(1) The State will, subject to budget constraints, maintain an organization with adequate staff to effectively administer the CWSRF program, including bond issuance, and reasonably ensure that projects which receive funding will meet applicable standards and limitations, that loans or other repayable financing are promptly repaid, and that fund assets are properly managed. Appendix 1 contains a chart of the Division of Financial Assistance's current staffing for the CWSRF program. In addition, there is staff in the Division of Administrative Services, Office of Chief Counsel, the Division of Information Technology, and the Regional Water Quality Control Boards that work on CWSRF projects and activities.

(2) The State agrees to manage the CWSRF program in accordance with the requirements of Title VI of the CWA, the terms of this OA, applicable federal and state laws, regulations, and guidelines, and the State Water Board's CWSRF Policy, as occasionally updated. The CWSRF Policy (Appendix 2) outlines the application requirements and procedures, including project checklists, to be followed in administering the program in compliance with State and EPA requirements. Updates to this document will be noted in the IUP and Annual Report.

(3) The State will devise and institute measures which will alert its staff to potential project level problems as they emerge and which will set forth State actions to correct such problems as effectively as possible so as to preclude the need for corrective action by EPA. If any recipient of financial assistance from the State's CWSRF funds violates any contractual commitment, including violation of

relevant federal laws or regulations, the State will take the appropriate remedial action.

- (4) The State will ensure that a coordinated interagency program will be carried out. Appendix 3A contains the statute creating the State Water Board and spelling out its powers and duties. Appendix 3B contains the California Water Code: Clean Water State Revolving Fund Implementing Legislation. Appendix 3C contains the statutes and codes which outline the fiscal duties and responsibilities of the State Controller's and State Treasurer's Offices. A Memorandum of Understanding outlining the functional responsibilities of these two State agencies and the State Water Board is included in Appendix 3D with respect to general obligation bond funded State match. The Attorney General's Certification concurring in the legal opinion of the Chief Counsel of the State Water Board and certifying that the State Water Board has the authority to bind itself to the terms of each grant agreement are included in Appendices 3E and 3F. With each capitalization grant application, the State Water Board will submit a certification from its Chief Counsel that the State Water Board's authority to enter into that year's grant agreement is still valid.
- (5) Responsibility for managing the CWSRF as set forth in this OA will not be subcontracted to private firms or other state agencies without prior written approval from the Regional Administrator (RA) of EPA.
- (6) The State may use funds provided by Section 603(d)(7) of the CWA, 33 U.S.C. §1383 (d) (7), bond proceeds, and annual fees, to the extent they are charged, to pay for program administration.
- (7) The State Water Board will work cooperatively through an Interagency Agreement with the California Infrastructure and Economic Development Bank (CIEDB) to develop and maintain a revenue bond program to leverage the CWSRF. A copy of the most recently executed agreement is included in Appendix 3G. The CIEDB serves as the issuer of the CWSRF bonds. Appendix 3H contains the current "Master Trust Indenture" and "Master Payment and Pledge Agreement" describing the parameters and procedures under which the CIEDB will issue CWSRF bonds.

c. Annual Reports

The State will prepare and transmit to EPA an Annual Report as described in 40 CFR § 35.3165. The Annual Report will be submitted no later than 120 days after the end of the state fiscal year, and will evaluate the extent to which the goals and objectives as set forth in this agreement and in the previous year's IUP were met. The Annual Report will cover the timing of State matching deposits and binding commitments, provide year-end data on projects identified in the IUP, identify recipients of financial assistance and the dates of the financing agreements, existing and projected outlays, and other pertinent information. Similar information will also be included in the Annual Report for other forms of CWSRF financial assistance which may be implemented by the State. Information on such other forms of assistance will include dates of actions, terms, construction progress, and any other pertinent information. In addition, the Annual Report will address the State's progress in meeting enforceable requirements, and how the State's environmental reviews were carried out. Updated data from the IUP on planned versus actual events with annotations accounting for meeting first use requirements, accelerations, slippages, substitutions, and other records pertaining to the State's performance in managing its facilities construction program, will form the basis for determining whether the State has met its objectives for the year. In addition, each Annual Report will address the recommendations of the previous year's Annual Report.

d. Environmental Review

- (1) The State Water Board will review the environmental impact of each project requesting CWSRF assistance before approving funding. The State Water Board will use the approved State Environmental Review Process included in the CWSRF Policy (Appendix 2) for this review.
- (2) If the environmental analysis document (EAD) that the State Water Board plans to use for its environmental review was completed more than five years before the date the assistance agreement will be executed for the project for which the EAD was prepared, the State Water Board will ensure that the project's EAD is reevaluated and a public notice issued explaining the results of the reevaluation. This applies to all projects eligible for CWSRF financing.
- (3) The State Water Board will ensure the implementation of applicable federal environmental statutes and authorities

(also referred to as federal cross-cutters) as required by 40 CFR § 35.3140 or an updated list as provided by EPA. The State Water Board will consult with relevant federal agencies, if necessary, to determine the appropriate steps to be taken to address applicable federal environmental issues. In such instances, the State Water Board will send copies of a draft EAD and supporting documents, or other summary information in the case of previously approved projects that are now underway, to the relevant federal agencies.

e. Credit Review

The State will conduct a credit review of the ability of applicants to pledge a defined funding source that is adequate to repay the debt service under the financing agreement and maintain and operate the project. Credit reviews that provide insufficient evidence of the applicant's ability to pledge a funding source adequate to repay the financing will be returned to the applicant for revision.

Where applicable, the following items will be considered:

- (1) Audited financial statements.
- (2) Budget projections, including the ramifications of litigation, debt service, and other expenses.
- (3) Number and type of users.
- (4) Average cost per user (including projected user charges) attributable to funding and operating the wastewater facilities (capital, operations, and maintenance costs).
- (5) Median household income for the service area.
- (6) Population and user trends projected over the term of the financing agreement.
- (7) Existing debt limitations.

f. Capitalization Grant Payments and Draws

- (1) The State will accept grant payments as scheduled in the capitalization grant agreement and amendments thereto. The State will request payment schedule changes (increases in the ASAP ceiling) in writing from the EPA Project Officer.

- (2) The State will provide to EPA an estimate of its quarterly disbursements from capitalization grants by June 30 of each year for the following State fiscal year.
- (3) Consistent with the requirements of the ASAP payment system, the State will:
 - Require secondary recipients to submit disbursement requests based on costs that have been incurred and are currently due and payable; additional provisions are described in the State Water Board's CWSRF Policy,
 - Initiate cash draws only when actually needed for disbursements as costs are incurred, and
 - Report cash draws and balances in a timely manner as required by the ASAP Payment System Users Manual.

g. Accounting Requirements

- (1) The State will establish and maintain fiscal controls and accounting procedures in conformance with generally accepted accounting principles to ensure that the requirements of CWA Title VI and all applicable federal laws and regulations regarding grants to states are fulfilled and the assets of the CWSRF are maintained in perpetuity. The accounting system will properly identify State costs for operating the CWSRF program. A description of the accounting system is contained in Appendix 4. Appendix 5 contains the fund account numbers established by the SCO.
- (2) The State will credit to a dedicated CWSRF account or accounts:
 - All repayments of principal and interest on CWSRF financing.
 - All interest and investments earnings on CWSRF balances.
 - All revenue bond proceeds at time of issuance to be used for project disbursements and administrative costs, if applicable.

h. Audit Requirements

The State will have an annual independent audit of the CWSRF and the operations of the CWSRF conducted. The State will

comply with the provisions of OMB Circular A-133 governing the audit of federal financial assistance to the state, local governments, and Indian tribes. The audit report will be completed within one year of the appropriate accounting period, and will be submitted to the RA, with a copy sent to EPA's Office of Inspector General at EPA, Office of the Inspector General, Western Division, 75 Hawthorne Street, San Francisco, CA 94105, or such other location as specified by EPA.

i. File Maintenance

- (1) The State will receive and review project documentation from funding applicants. This documentation, together with the State's review memoranda and checklists, will be filed in an official project file maintained by the State. The project files shall be made available to EPA upon request.
- (2) The State will meet or exceed the records retention requirements under 40 CFR § 31.42.

j. Data Management

The State will maintain data systems designed to enable it to manage the CWSRF program, report data to EPA in an approved format, and fulfill information requests related to the CWSRF program in a timely manner.

k. Requests for Information

- (1) The State will respond to federal Congressional inquiries and coordinate those responses as necessary with EPA. Copies of the response and the inquiry will be sent to EPA as appropriate.
- (2) Appendix 6 contains the California Public Records Act Guidelines used by the State Water Board to process public records requests.

l. Cross-Collateralization

Should the State choose to cross-collateralize the CWSRF and the Drinking Water State Revolving Fund, the State will follow procedures set forth in 40 CFR § 35.3530(d), as well as applicable state laws.

m. Transfer

The State may choose to engage in transfer pursuant to 40 CFR § 35.3530(c). The State will reflect any such transfer in its Annual Report. (NOTE: Public Law 109-54 overrides the provisions of 40 CFR § 35.3530(c)(6), continuing the authority for transfer.)

n. Small Community Grants

The State has created a program for providing grant assistance to small communities

(http://www.waterboards.ca.gov/water_issues/programs/grants_loans/small_community_wastewater_grant/strategy.shtml). While the State funds this program in part through fees charged to CWSRF recipients (non-“program income”), it will limit grants using these fees to projects otherwise eligible for CWSRF funding.

o. Extended Term Financing

The State has received approval from EPA to provide extended term financing. The State will provide extended term financing as reflected in the applicable appendix to the CWSRF Policy.

p. Sources of State Match

The State shall provide a state match equal to at least 20 percent of the federal capital contributions requiring a 20 percent state match using any combination of the following sources of funds.

- (1) Proceeds from the sale of general obligation bonds not repaid by the CWSRF.
- (2) Assets from the 1984 Water Reclamation Account. Section 13999.10(d) of the Water Code states: “...all principal and interest from loans shall be returned to the Water Reclamation Account for new loans.” The assets of the Reclamation Account have been placed in the CWSRF, and the money in the Reclamation Account is available in perpetuity for financing future water reclamation projects through the CWSRF. Appendix 5 contains a flow chart to track the principal and interest repayments and the internal procedures describing the flow of funds for the Water Reclamation Account.
- (3) Cash from the Water Quality Control Fund Loan Program.
- (4) Project funds contributed by local governments to pay the 20 percent State match in return for local match financing.

- (5) Proceeds of revenue bonds repaid by CWSRF earnings.
- (6) The State may, from time to time, identify other sources of State match. Such funds will not be used for State match until such time as their use has been approved by the EPA.

q. State Payment of State Match

The State will pay an amount equal to 20 percent of the federal cash contribution on or before the date of each cash draw from the ASAP. Under the local match financing option, local governments will pay the state match share of the eligible amount of the contractor's invoice to the contractor and then submit the request for disbursement to the Division; the Division will disburse five-sixths of the total disbursement request. As an alternative, local governments may pay the 20 percent State match portion to the State Water Board prior to the first disbursement, in which case the State Water Board will disburse 100 percent of each disbursement request to the local government. Local government recipients also have the option to pay the contractor the full amount of the contractor's invoice until they have paid an amount equal to the state match portion of the CWSRF financing amount; subsequent disbursement requests will then be paid by the State Water Board at a rate of 100 percent of eligible costs.

r. Binding Commitments

The State will make binding commitments, in the form of signed financing agreements, in an amount equal to 120 percent of each federal quarterly ASAP increase within one year of that quarterly increase.

s. Expeditious Expenditure

The State will “expend” CWSRF funds “in an expeditious and timely manner” pursuant to 40 CFR 35.3135 (d).

t. First Use

(1) State Requirement

The State will first use the assets of the CWSRF to assist local agencies with facilities on the National Municipal Policy (NMP) list which do not meet any of the criteria under 40 CFR § 35.3135(e)(3).

(2) State Certification

In any year that the State plans to assist projects other than those on the non-compliance portion of the NMP list, the IUP for that year will include a certification that the first use requirements have been met.

u. Application of Other Federal Authorities

The State will comply, and ensure compliance by its agents and recipients of CWSRF assistance, with applicable federal laws and regulations as required by 40 CFR § 35.3145. If necessary, EPA will update this list of federal statutes with each capitalization grant.

v. EPA Program Review

The State will cooperate with and assist in EPA program audits and evaluations.

w. Prevention of Double Benefits [see CWA Section 603(e), 33 U.S.C. §1383]

The State will require recipients of CWSRF assistance to repay any financing made from the CWSRF “to finance the cost of facility planning and the preparation of plans, specifications and estimates” for construction of a POTW, if the project received a grant under Section 201(g) of the CWA, 33 U.S.C. § 1281 (g), which included an allowance for planning and design costs under Section 201(l)(1) of the CWA, 33 U.S.C. § 1281 (l) (1). Such repayment must be obtained from the CWSRF recipient within 30 days of notification of the occurrence.

x. Consistency with Planning Requirements [see CWA Section 603(f), 33 U.S.C. §1383]

The State will not provide assistance from the CWSRF to projects which are inconsistent with plans which have been developed under Sections 205(j), 208, 303(e), 319 and 320 of the CWA.

y. Eligibility of Non-Federal Share of Construction Grant Projects [see Section 603(h) of the CWA, 33 U.S.C. §1383(h)]

(1) Non-Federal Share

The State will not provide funding from the CWSRF to finance the non-federal share of the cost of a “treatment works project,” which has received a federal grant under Section 201(g) of the CWA.

(2) Limitation on CWSRF Financing

The State may provide other forms of CWSRF financial assistance, such as loan guarantees and insurance, to finance the non-federal share of the cost of a grant funded "treatment works project" only if such CWSRF assistance "is necessary to allow the project to proceed." The State will maintain documentation of the basis for such a determination in the project file.

z. Disadvantaged Business Enterprises (DBE) Compliance

The State will ensure that all CWSRF assistance awarded under this Agreement complies with the DBE program objectives pursuant to 40 CFR Part 33. Progress under the assistance awards shall count toward meeting the State commitment. The State also agrees to transmit to the EPA's DBE coordinator, a completed EPA Form 334 (DBE Utilization Report) within 30 days after the end of each semi-annual reporting period during which the State or its subrecipients award any assistance awards.

B. EPA

1. General

EPA is responsible for evaluating State program activities and determining compliance with federal requirements.

2. Specific

a. CWSRF Administration Role

EPA will be responsible for determining whether, prior to awarding a capitalization grant, the State can and will meet the requirements necessary for administering the CWSRF program as set forth in Title VI of the CWA; for reviewing and approving applications for award of capitalization grants; for establishing the ASAP payment schedule, consistent with the schedule derived from the State's IUP; and for overseeing the State's administration of the CWSRF program.

b. Program Evaluation

(1) EPA will evaluate the State's program at least annually.

(2) EPA agrees to notify the State within 90 days as to the technical adequacy of the State's annual report or audit and its findings.

- (3) EPA agrees to provide the State with reasons for, and details on, its requests for data and a reasonable amount of time to obtain same.
- (4) EPA's oversight will take into consideration actions taken by the State to accommodate changes in the bond market; changes in State law or regulation; circumstances at the project level; adjustments in financing terms in instances of default; and the extent to which these actions were anticipated by the State and addressed in the IUP, Annual Report, or its policies and procedures.

c. CWSRF Payments

- (1) EPA agrees to provide funding by awarding capitalization grants to the State after joint acceptance of this OA and approval of a completed grant application in accordance with 40 CFR Parts 31 and 35, and to make timely grant payments in accordance with the jointly developed payment schedule and the disbursement estimate prepared annually by the State. The method by which capitalization grant draws are deposited into the CWSRF and then transferred to funding recipients is described in detail in Appendix 4.
- (2) Federal increases or decreases to the CWSRF payments can only be made through a capitalization grant amendment. Approved payment schedule changes will be transmitted by a memo of approval from the Project Officer to the EPA Grants Management Section for execution, and will be incorporated into a capitalization grant agreement.

d. Noncompliance

- (1) If the State is determined to be in noncompliance with the terms of this OA, the IUP or any other requirement of Title VI of the CWA, the RA will notify the State of the noncompliance, the necessary corrective action, and the follow-up actions to be taken. Pursuant to 40 CFR 35.3170(b), in making a determination of noncompliance and devising the corrective action, the RA will identify the nature and cause of the problems in writing. The State's corrective action must remedy the specific instance of noncompliance and make necessary adjustments to avoid noncompliance in the future.

- (2) Pursuant to 40 CFR 35.3170 (c), if within 60 days of receipt of the noncompliance notice, the State fails to take the necessary actions or to provide an acceptable plan to achieve the results required, the RA shall withhold payments to the CWSRF until the State has taken acceptable actions. Once the State has taken corrective action satisfactory to the EPA, the withheld payments will be released and scheduled payments continued. If the State fails to take acceptable corrective action within twelve months of receipt of the original notice, EPA may deobligate and reallocate to other states any withheld payments.
- (3) In addition, failure by the State to manage the CWSRF in a financially sound manner will be grounds for a finding of noncompliance. Failure to satisfy the terms of the OA, including unmet assurances or invalid certifications, is grounds for a finding of noncompliance.
- (4) If the EPA determines that the capitalization grant funds or funds resulting from the capitalization grant were subject to waste, fraud or abuse by the State, the capitalization grant, or any appropriate part thereof, may be recovered under procedures outlined in 40 CFR Part 31.
- (5) Determinations by the EPA involving any denial of an application for a capitalization grant as well as any dispute arising under a capitalization grant, including suspension or termination of grant assistance, will be final and conclusive unless appealed by the State within 30 days from the date of receipt of such final determination in accordance with the "Disputes" provisions of 40 CFR Part 31 Subpart L.

III. AGREEMENT

A. AMENDING THE OPERATING AGREEMENT

This OA may be amended at any time by mutual agreement between the parties as specified below. The State and EPA agree that any modifications to this agreement which may be required by any future laws, regulations, or guidelines will be negotiated and implemented as quickly as possible.

1. Modifications

Except as follows, modifications to this Agreement can be made if jointly agreed to by the designated signatories below.

a. For the State:

Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95812

b. For the EPA:

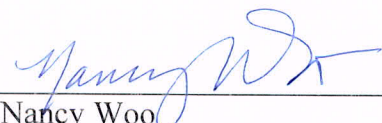
RA or Director Water Division
United States Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105

2. Appendices

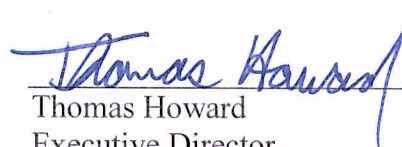
The State may make changes to the Appendices, unless otherwise requiring approval from EPA, consistent with this Agreement, and will provide copies of any such changes to EPA, Region IX.

B. EXECUTION

This amended Operating Agreement will be effective once signed by both of the designated signatories below.



Nancy Wood
Acting Director
Water Division
U.S. Environmental
Protection Agency
Region IX



Thomas Howard
Executive Director
State Water Resources
Control Board

Date NOV 06 2012

NOV 06 2012

Date OCT 30 2012