

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2008-0085**

APPROVING A CLEAN WATER STATE REVOLVING FUND (CWSRF) FINANCE
COMMITMENT TO THE ANTIOCH (CITY) DEVELOPMENT AGENCY (AGENCY) FOR
CONSTRUCTION OF THE MARKLEY CREEK REMEDIATION PROJECT (PROJECT);
CWSRF PROJECT NO. C-06-5172-110

WHEREAS:

1. The Agency has requested \$2.5 million in financing the proposed Project to comply with Central Valley Regional Water Quality Control Board's Cleanup and Abatement Order (CAO) Numbers R5-2002-735 and 736. The CAO was issued because burned and unburned municipal wastes were buried along the south and north banks of Markley Creek (Creek), and a slope failure in the south bank of the Creek discharged waste into the Creek which is a tributary to the San Francisco Bay Estuary;
2. This Project achieves Actions P.O.-1.8, 2.4, 3.1, and 4.1 of the *Comprehensive Conservation and Management Plan* for the San Francisco Bay Estuary;
3. The State Water Board, on September 2, 2008, adopted the state fiscal year 2008/2009 CWSRF Program Priority List which included the Agency's Project in Priority Class C;
4. The Division of Financial Assistance (Division) approved the Project plan for the Agency's Project on October 2, 2008, and the Agency agreed with the approval on October 8, 2008;
5. The City started construction of this project before plans and specifications (P&S) approval. Typically, construction started before Final P&S approval is not eligible for CWSRF;
6. The City adopted an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Reporting Plan and approved the Project on July 24, 2007;
7. The City filed a Notice of Determination with Governor's Office of Planning and Research on June 5, 2008, and with the Contra Costa County Clerk on June 9, 2008;
8. State Water Board staff reviewed and considered the information contained in the applicable environmental documents and determined that the project will improve water quality;
9. The Agency is proposing to use the tax increment revenue from Project Area 1 to pay back the financial assistance. The legal opinion from the City Attorney states there is no election or Proposition 218 requirement for Project Area 1 revenues; and
10. An independent credit review performed on September 9, 2008 determined that the Agency qualifies for \$3.75 million and specified appropriate conditions for the financing agreement.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF Preliminary Funding Commitment (PFC) of \$2.5 million for the Agency's Project, with a financing maturity day on or before July 15, 2028, and the first repayment due one year after the first disbursement;
2. Directs the Division to allocate \$2.5 million consistent with the construction schedule and availability of funds;
3. Allows construction completed prior to plans and specifications approval to be eligible for CWSRF financing; and
4. Includes the following conditions:
 - A. This CWSRF PFC will expire if the Agency does not sign the CWSRF financing agreement by September 30, 2009. Division staff may approve a 90-day extension if the financing agreement is not signed by September 30, 2009.
 - B. As determined by the Agency's credit review, the financing agreement is subject to the following conditions:
 - a. The Financing Agreement shall be secured on parity with the outstanding 2000 Tax Allocation Refunding Bonds, and
 - b. The Agency shall fund the Reserve Fund (one year's debt service) from available cash in the Project Area 1 Capital Projects Fund prior to CWSRF financing.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 2008.

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

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board