

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-0058**

ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS, AND A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE LINDA COUNTY WATER DISTRICT (DISTRICT), WASTEWATER TREATMENT PLANT (WWTP) EXPANSION PROJECT (PROJECT), CWSRF PROJECT NO. C-06-5098-110

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the "*Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*" (Policy) and amended it on March 17, 2009;
2. The American Recovery and Reinvestment Act of 2009 (ARRA) was enacted by Congress and signed into law on February 17, 2009, providing approximately \$280 million to the CWSRF Program for local assistance that must be committed quickly to eligible projects;
3. In accordance with [Resolution No. 2009-0027](#), adopted by the State Water Board on March 17, 2009, the State Water Board will allocate up to 65 percent of its ARRA funding to principal forgiveness for wastewater infrastructure projects for disadvantaged communities and to restart stopped bond projects. The remaining ARRA funds will be used to provide zero or one percent fixed-rate financing;
4. The State Water Board, in September 2008, adopted the State Fiscal Year 2008/2009 CWSRF Program Project Priority List, which includes the District's Project in Priority Class C;
5. The Division of Financial Assistance (Division) approved the Facility Plan for the District's Project on June 4, 2009, and the District accepted the Facility Plan Approval on June 8, 2009;
6. An independent credit review was completed on March 31, 2009, recommending a maximum credit limit of \$44.304 million for the District's Project;
7. The District is a small (population less than 20,000 persons), disadvantaged (median household income [MHI] less than 80 percent of the Statewide MHI) community with current wastewater rates less than 1.5 percent of the community's MHI;
8. In accordance with Proposition 218, the District's Board of Directors will hold a public hearing on July 13, 2009, to consider adoption of a proposed ordinance to increase the District's wastewater rates to 1.5 percent of the community's 2008 MHI over three years, which, if successful, will make the District eligible for a maximum of \$10 million in principal forgiveness and qualify the District for extended term financing (ETF);
9. The District certified an Environmental Impact Report (EIR) (State Clearinghouse No. 2006032130), adopted a Mitigation Monitoring and Reporting Program and a Statement of Overriding Considerations (SOC), and approved the Project on September 10, 2007;

10. The District filed a Notice of Determination with the Yuba County Clerk on September 12, 2007, and the Governor's Office of Planning and Research on September 13, 2007;
11. The District adopted a SOC to substantiate its decision to approve the Project despite the following: 1) significant and unavoidable permanent impacts to: a) land use and planning, b) agricultural and mineral resources, c) population and housing, and d) recreation; 2) temporary impacts to noise; and 3) cumulative impacts to biological resources;
12. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh these unavoidable adverse environmental impacts:
 - a. The Project will allow the District to comply with and implement the requirements of its National Pollutant Discharge Elimination System permit;
 - b. The Project will improve the quality of the treated effluent and water quality conditions in the Feather River;
 - c. The Project will provide the District an opportunity to produce and utilize recycled water in the future, and to advance important water conservation goals and objectives;
 - d. The District is required to maintain adequate wastewater treatment and disposal capacity to meet the needs of existing and projected growth within the District's service area. The Project will provide expanded capacity in accordance with these requirements and policies;
 - e. The Project will support economic and housing development in the area in accordance with the goals and policies of the County of Yuba's economic and housing development and other land uses;
 - f. New development that is facilitated by the Project will generate new employment-generating land uses and jobs in Linda, provide economic growth in the community, and increase the District's revenue from connection and service charges; and
13. State Water Board staff reviewed and considered the EIR and associated environmental documents, and determined that the Project will not result in any significant adverse water quality impacts.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the above SOC for the District's Project;
2. Conditions the financing agreement, as determined by the District's credit review, with the following items:
 - a. A reserve fund, equal to one year's debt service, must be established by the District prior to the completion of construction date; and
 - b. The financing agreement shall be limited to a maximum of \$44.304 million unless information supporting the credit review changes;

3. Approves a CWSRF PFC of \$54.304 million for the District's Project, comprised of \$2 million to \$10 million in ARRA principal forgiveness per State Water Board Resolution No. 2009-0027 and the balance in financing. If the District adopts wastewater rates, in accordance with Proposition 218, that raise rates greater than or equal to 1.5 percent of the community's 2008 MHI prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$10 million, with a 30-year repayment period. If wastewater rates greater than or equal to 1.5 percent of the community's 2008 MHI are not adopted prior to July 31, 2009, the ARRA principal forgiveness is set at a maximum of \$2 million, and the financing repayment period shall be 20 years. The financing agreement will be at a one percent (1%) interest rate. The first repayment shall be due one year after completion of construction;
4. Conditions this approval by withdrawing the CWSRF PFC if the District does not sign the CWSRF financing agreement by August 17, 2009, in accordance with Section IX (K) of the Policy. Division staff has the discretion to approve up to a 120-day extension for good cause;
5. Conditions this approval such that a financing agreement may be executed, but funds for construction will not be disbursed until the District approves the wastewater rates subject to Proposition 218;
6. Conditions the financing agreement to require the District to implement a public education program for two years following the adoption of the new wastewater rates, if five percent (5%) or more of the ratepayers protest the rate increase during the Proposition 218 process;
7. Conditions this approval such that the District must meet the following deadlines to maintain ARRA eligibility:
 - a. A financing agreement must be executed or be executable by August 17, 2009;
 - b. The Division must receive a completed Approval of Award request by October 15, 2009; and
 - c. The Division must receive a copy of an executed construction contract by November 15, 2009;
8. Conditions this approval such that the District shall certify that it meets all requirements of the ARRA including, but not limited to, the following:
 - a. Section 1512 – Reporting Requirements;
 - b. Section 1605 – American Iron, Steel, and Manufactured Goods; and
 - c. Section 1606 – Federal Prevailing Wage;
9. Conditions this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by ARRA, including, but not limited to, provisions related to principal forgiveness. The District may still be eligible for CWSRF funding, at the standard rate, if CWSRF funding is available;
10. Conditions this approval such that the District shall submit the following items prior to execution of a financing agreement:
 - a. A letter from the authorized representative confirming that the District has no outstanding wastewater debts;
 - b. A dedicated source of revenue resolution;

- c. A general plan compliance certification;
 - d. A tax questionnaire and reimbursement resolution;
 - e. A legal opinion on access to and ownership of land for the Project;
 - f. A corrected authorized representative resolution; and
11. Conditions this approval such that if additional funding is needed for the Project (i.e., the amount of financing that must be repaid exceeds \$44.304 million or the repayment period is 20 years), prior to execution of the financing agreement the District will be required to submit evidence of additional funding for the remaining balance of the Project and/or the District's ability to repay the financing over 20 years.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on July 7, 2009.

AYE: Chairman Charles R. Hoppin
Vice Chair Frances Spivy-Weber
Board Member Arthur G. Baggett, Jr.
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board