

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-0027**

**IMPLEMENT FEDERAL ECONOMIC RECOVERY LEGISLATION FOR THE
CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM**

WHEREAS:

1. The Division of Financial Assistance (Division) administers the CWSRF Program to finance publicly-owned treatment facilities, non-point source (NPS) projects and programs, and estuary comprehensive conservation and management plans;
2. The *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (CWSRF Policy) was originally adopted by the State Water Resources Control Board (State Water Board) on August 18, 1988, and recently amended;
3. The CWSRF Program has shown compliance with “federal cross-cutters” in excess of what is needed to comply with federal regulations for the foreseeable future;
4. The American Recovery and Reinvestment Act (ARRA) of 2009 will provide approximately \$270 million to the CWSRF Program for local assistance that must be committed quickly to eligible projects;
5. CWSRF Policy actions by the State Water Board are necessary to implement ARRA to maximize the benefits to California’s infrastructure and water quality needs, particularly for disadvantaged communities and projects that lost previously committed state grant funding;
6. Federal law requires that economic recovery money be expended according to the following rules:
 - Funds must be committed to projects that will be under contract for construction by February 17, 2010, or else The United States Environmental Protection Agency (U.S. EPA) will reallocate the funds to other states that can use the funds.
 - Projects must use American made steel, iron, and other manufactured goods unless certain exceptions are made by the U.S. EPA Administrator.
 - States must use a minimum of 50 percent of ARRA funds for principal forgiveness, negative interest rates, or grants (subsidy funds).
7. To meet the deadlines and requirements of ARRA and support the State Water Board’s existing policies and goals, it is useful for the State Water Board to:
 - Discontinue the yearly disbursement ceiling.
 - Suspend the match financing option.
 - Suspend demonstration of compliance with certain federal laws.
 - Give ARRA funding to projects that will be under contract to construct and sign a CWSRF funding agreement no later than February 16, 2010.
 - Reserve ARRA funds for a limited period of time for certain applicants.
 - Establish limits on how much ARRA funding a project may receive.
 - Reduce the interest rate on financing that does not qualify for other incentives.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Continues the per agency disbursement ceiling of \$50 million per year per agency until further notice, but continues to require the Deputy Director of the Division to evaluate, and limit if appropriate, the effect of large projects on the ability of other applicants to receive funding;
2. Discontinues match financing until further notice, but allows applicants that have submitted an application as of the date of this resolution to select match financing;
3. Directs Division staff to determine whether projects comply with state laws only, with the exception of federal super cross-cutters, for all projects until further notice;
4. Establishes the following primary guidelines for staff to follow while implementing the ARRA funds for California;
 - 50 percent of ARRA funds should be used as subsidy funds.
 - ARRA funds should be reserved for State Water Board priorities, beyond those specified in ARRA, only for a limited period of time.
 - ARRA funds should be distributed as fairly as possible. ARRA funds should be distributed in a manner that takes account of ongoing efforts to regionalize wastewater treatment or uses regional solutions.
 - Small, disadvantaged communities (<20,000 population and <80 percent of the statewide Median Household Income (MHI)) should receive priority for subsidy funds over other communities if subsidy funds become limited.
 - Projects that lost previously committed State Water Board grant funds should receive priority for subsidy funds.
 - Projects with earlier construction start dates should receive priority for subsidy funds before projects with later construction start dates if subsidy funds become limited.
5. Reserves ARRA subsidy funds for categories of applicants according to the following schedule and limitations:

Subsidy Funds by Category of Applicant

Category	Subsidy Per Project	Conditions
Community MHI < 80 percent of statewide MHI, or a community that pays at least 4 percent of their MHI toward wastewater infrastructure. (25% ARRA)	Existing Small Community Wastewater Grant (SCWG) commitments for design and construction: Shall receive priority for the amount previously committed before subsidies are given to other disadvantaged communities. (Approximately \$25 million in subsidy funds will be reserved for this need.) If Applicant's rates or implementation costs are equal to or greater than 1.5 percent of the community's MHI:	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF and ARRA eligibility requirements. ▪ Complete application must be received by the Division and the financing agreement must be executed or executable before September 1, 2009. ▪ Complete Approval of Award (AOA) request must be received by the Division before January 1, 2010. ▪ Copy of executed construction contract must be received by the Division before February 1, 2010.

Category	Subsidy Per Project	Conditions
	<p>1) Projects less than \$3 million may receive 100 percent subsidy.</p> <p>2) Projects greater than \$3 million may receive subsidy of \$3 million plus 50 percent of the amount over \$3 million not to exceed \$10 million in subsidy funds.</p> <p>If Applicant's rates or implementation costs are less than 1.5 percent of the community's MHI:</p> <p>Applicant may receive 100 percent subsidy of project cost not to exceed \$2 million in subsidy funds.</p>	<ul style="list-style-type: none"> ▪ Projects receiving a subsidy based on wastewater rates in excess of 4 percent of their MHI must receive approval on a case-by-case basis from the State Water Board.
<p>Restart – Projects that lost previously committed State Water Board grant funding (not including SCWG projects).</p> <p>(25% ARRA)</p>	<ul style="list-style-type: none"> ▪ Maximum: \$5 million or the amount needed to replace lost State Water Board grant funds plus reasonable costs to restart the project. 	<ul style="list-style-type: none"> ▪ Projects may not receive more than one hundred (100) percent subsidy financing. ▪ Projects must meet CWSRF and ARRA eligibility requirements. ▪ Projects must have an executed State Water Board grant agreement that was suspended and an executed construction contract or proof of project initiation received by the Division before May 17, 2009. ▪ In addition to the primary guidelines above, priority for subsidy projects may be determined by the Executive Director consistent with established State Water Board guidance.

6. Delegates to the Executive Director, in consultation with the State Water Board Chair and Vice Chair, the ability to allocate an additional 15% of ARRA funds to the categories in Resolved 5, such that no more than 65% of ARRA funds may be used as subsidies;
7. Makes ARRA subsidy funds that are not committed to projects that lost previously committed State Water Board grant funding available to non-point source or estuary (expanded use) projects starting May 17, 2009. The Executive Director in consultation with the State Water Board Chair and Vice-Chair shall determine, after public review, how much subsidy funds remain uncommitted after May 16, 2009 and distribute those funds as fairly as possible to eligible expanded use applicants, consistent with the subsidy limit and conditions specified above for restarting State Water Board grant projects, that can submit an AOA request before January 1, 2010 and a copy of an executed construction contract before February 1, 2010;

8. Makes ARRA subsidy funds that are not committed to communities with MHIs less than 80 percent of statewide MHI, projects that lost previously committed state grant funding, or other expanded use projects available for distribution to all eligible applicants starting September 1, 2009;
9. Delegates to the Executive Director the responsibility in consultation with the State Water Board Chair and Vice-Chair to determine, after public review, how much subsidy funds remain uncommitted after August 31, 2009, and the authority to distribute those funds as fairly as possible to all eligible applicants that submitted an AOA request before January 1, 2010, and submitted copies of an executed construction contract before February 1, 2010;
10. Determines that any applicant with an executed debt obligation after October 1, 2008 is eligible for any remaining subsidy funds distributed in this manner;
11. Delegates authority to the Executive Director, or designee, to modify the amount of subsidy a project may receive if it will ensure a reasonable implementation of ARRA provided the Executive Director, or designee, only takes such action after any prospective recipient, adversely affected by the action, has an opportunity to comment on the proposed action with the caveat that the Executive Director or designee, without restricting their authority, should update the Board Members and the public at Board Meetings, or by other appropriate communication, on the progress of implementing ARRA and recommend appropriate adjustments to the implementation plan or other changes in policy or procedure necessary to achieve the most favorable result for water quality in California;
12. Offers reduced interest and service rates for innovation and efficiency projects as well as all other financing not eligible for other incentives or subsidies, according to the following schedule; and

Interest and Service Rate Incentives by Category of Applicant

Category	Interest/Service Rate	Conditions
Innovation and efficiency projects	Zero (0) Percent	<ul style="list-style-type: none"> ▪ Up to a total of \$60 million in cumulative financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable between March 17, 2009 and July 18, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.
All projects	One (1) Percent	<ul style="list-style-type: none"> ▪ Up to a total of \$300 million in cumulative financing. ▪ Completed application must be received by the Division and the financing agreement must be executed or be executable between March 17, 2009 and September 1, 2009. ▪ Completed AOA request must be received by the Division before January 1, 2010. ▪ Copy of an executed construction contract must be received by the Division before February 1, 2010.

13. Determines that innovation and efficiency projects are those that substantially meet U.S. EPA's final guidance ([Attachment A is U.S. EPA's draft guidance](#)) for innovation and efficiency projects, or projects that will achieve a goal or substantially meet a target, or guidance established through a public process or established by a state or national entity that regulates or represents innovation or efficiency interests, and are consistent with the existing CWSRF Program eligibility criteria; and
14. When the State resumes bond sales, the State Water Board will revisit the allocation of grants under the various bond programs to take account of subsidies provided for stopped grant projects, with the intent of promptly allocating new grant funds.

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 March 17, 2009.

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

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board