

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-0047**

ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND CLEAN WATER STATE REVOLVING FUND (CWSRF) PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF HUGHSON (CITY), WASTEWATER TREATMENT PLANT (WWTP) UPGRADE AND EXPANSION (PROJECT), CWSRF PROJECT NO. 5139-110

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the "*Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities*" (Policy) and amended it on March 17, 2008;
2. The State Water Board, in September 2008, adopted the State Fiscal Year 2008/2009 CWSRF Program Priority List which included the City's Project in Priority Class C;
3. The Division of Financial Assistance (Division) approved the Facility Plan Approval (FPA) for the City's Project on May 8, 2009, the City agreed to the FPA on May 13, 2009;
4. An independent credit review was completed on November 18, 2008, recommending a credit limit of \$23.1 million unless information supporting the credit review changes and a supplemental credit review is performed;
5. The City plans to adopt new rates at their September 14, 2009, City Council Meeting in accordance with Proposition 218;
6. The City prepared a Final Environmental Impact Report (EIR) that includes the Project;
7. The City certified the final EIR, adopted a Mitigation Monitoring Plan and Statement of Overriding Considerations, and approved the Project on September 24, 2007;
8. The City filed a Notice of Determination with the Stanislaus County Clerk and the Governor's Office of Planning and Research before adopting the environmental documents and approving the Project; however, the statute of limitations expired and no issues were raised;
9. The City adopted a Statement of Overriding Considerations to substantiate its decision to approve the Project despite significant unavoidable impacts in the areas of 1) agricultural resources (loss of prime farmland and violation of Williamson Act Land Conservation Contract), 2) noise (temporary exceedances of City thresholds for construction-related noise), 3) air quality (cumulative impacts resulting from concurrent implementation of the Project with the City's General Plan), and 4) growth inducement (removes barriers to growth that can result in significant and unavoidable aesthetic, agricultural resource and air quality impacts);
10. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh the unavoidable adverse environmental impacts on agriculture, noise, and air quality and the growth inducements:
 - a. The Project is necessary to address the water quality violations identified by the Central Valley Regional Water Quality Control Board and to meet the revised Waste Discharge Requirements.
 - b. The Project will ensure adequate wastewater treatment that will accommodate existing and future growth and provide for the projected increase in wastewater treatment capacity.

- c. The Project will implement the City's General Plan. The General Plan was adopted following a comprehensive review and public participation process, which included input from all segments of the community. The General Plan represents the community's fundamental policies and aspirations for the future course of development in the City.
11. The State Water Board reviewed and considered the EIR and applicable environmental documents, and determined that the Project will not result in any significant adverse water quality impacts;
 12. The City must meet the following deadlines:
 - a. A financing agreement must be executed or be executable by September 1, 2009.
 - b. The Division must receive a completed Approval of Award (AOA) request before October 1, 2009.
 - c. The Division must receive a copy of an executed construction contract before October 16, 2009.
 13. The City must comply with any additional conditions required by the American Recovery Reinvestment Act of 2009 (ARRA) including, but not limited to the following in order to receive a one percent financing agreement:
 - a. Section 1606 - Davis-Bacon Act wage rules apply
 - b. Section 1605 – Buy American requirements
 - c. Section 1512 - Reporting
 14. Failure to comply with the time restrictions and special conditions of ARRA will automatically terminate this PFC. The City may still be eligible for CWSRF funding, at the standard financing rate at the time of the PFC, if CWSRF funding is available; and
 15. The City must adopt a reimbursement resolution no later than 60 days after start of construction, and sign a tax certificate before executing a CWSRF agreement.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts a Statement of Overriding Considerations regarding the City's WWTP Project;
2. Conditions the financing agreement, as determined by the City's credit review, with the following items:
 - a. The financing agreement shall be secured on parity with the outstanding Installment Sales Agreement.
 - b. The City shall fund a reserve fund of one year's debt service from available cash in the Wastewater Systems Revenue prior to completion of construction date.
 - c. The financing agreement shall be limited to a maximum of \$23.1 million unless information supporting the credit review changes and a supplemental credit review is performed.
3. Approves a \$23.1 million CWSRF PFC for the proposed Project, including a 20-year repayment period, with the first repayment due one year after completion of construction;
4. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF agreement by September 1, 2009, in accordance with Section IX (J) of the Policy. Authorize Division staff the discretion to approve up to a 90-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 rates subject to Proposition 218 are approved;
6. Conditions the financing agreement to require the City to implement a public education program for two years following the adoption of the new sewer rate schedule if five percent or more of the ratepayers protest during the Proposition 218 process.
7. Conditions this approval such that the City must meet the following deadlines:
 - a. A financing agreement must be executed or be executable by September 1, 2009.
 - b. The Division must receive a completed AOA request before October 1, 2009.
 - c. The Division must receive a copy of an executed construction contract before October 16, 2009.
8. Conditions this approval such that the City must comply with any additional conditions required by ARRA including, but not limited to the following in order to receive a 1 percent interest financing agreement:
 - a. Section 1606 - Davis-Bacon Act wage rules
 - b. Section 1605 – Buy American requirements
 - c. Section 1512 - Reporting
9. Conditions this approval such that this PFC will be withdrawn if the City fails to comply with the time restrictions and special conditions of ARRA. The City may still be eligible for CWSRF funding, at the standard financing rate at the time of this PFC, if CWSRF funding is available; and
10. Conditions this approval such that the City must adopt a reimbursement resolution no later than 60 days after start of construction, and sign a tax certificate before executing a CWSRF agreement.

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 June 16, 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