

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2009-0050**

ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND EXECUTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF CHICO (CHICO), WATER POLLUTION CONTROL PLANT (WPCP) OUTFALL PROJECT (PROJECT), CWSRF PROJECT NO. C-06-4997-120

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) in 1987 and most recently 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 Priority List which included the City’s Project in Priority Class C;
5. The Division of Financial Assistance (Division) approved the Facility Plan for the City’s Project on May 21, 2009, and the City accepted the Facility Plan Approval (FPA) on May 22, 2009;
6. An independent credit review was completed on February 20, 2009, recommending a maximum credit limit of \$7.25 million for the City’s Project;
7. The City is a disadvantaged community eligible for a maximum of \$2 million in principal forgiveness, as the City’s wastewater rates are less than 1.5 percent of the community’s median household income;
8. The City certified an environmental impact report (EIR) (State Clearinghouse No. 2004022111), approved the Project, and adopted a Mitigation and Monitoring Plan and a SOC for the Project on October 18, 2005;
9. The City filed a Notice of Determination with the Governor’s Office of Planning and Research on October 20, 2005, and with the Butte County Clerk on October 24, 2005;
10. The City adopted an SOC to substantiate its decision to approve the Project despite significant unavoidable impacts on the Sacramento River from mercury, and growth inducement in the City;
11. The State Water Board adopted on December 4, 2007, its own SOC for unavoidable adverse Phase 1 project impacts on the Sacramento River from mercury and growth inducement in the City resulting from the expansion of the WPCP ([Resolution No. 2007-0065](#));

12. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Phase 2 Project outweigh the unavoidable adverse environmental impacts:
 - The relocation of the outfall will provide for continued, reliable sewer service from the WPCP by preventing silt and gravel from blocking the outfall;
 - Expansion of the WPCP, and thus the outfall, will avoid further nitrate contamination of groundwater caused by existing septic systems;
 - The Project will enable the City to continue to meet its National Discharge Elimination System permit requirements for discharge of effluent into the Sacramento River;
 - Approval of the Project will allow the City to implement its General Plan and provide for anticipated growth, including the provision of housing;
13. State Water Board staff reviewed and considered the EIR and applicable environmental documents and determined that the Project will not result in any additional significant adverse water quality impacts; and
14. The following Special Condition is applicable to the Project:
 - U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration Fisheries-National Marine Fisheries Service (NMFS) issued Biological Opinions (BOs) for the Project. The BOs include reasonable and prudent measures necessary and appropriate to minimize adverse Project effects on special-status species. The City will have to comply with NMFS' and USFWS' non-discretionary terms and conditions, which implement the reasonable and prudent measures. The terms and conditions from USFWS and NMFS will be included as special conditions in Exhibit D of the City's CWSRF financing agreement and can also be found in the BOs.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the above SOC for the City's Project;
2. Conditions the financing agreement, as determined by the City's credit review, with the following items:
 - a. A reserve fund, equal to one year's debt service, must be established by the City prior to completion of construction date; and
 - b. The financing agreement shall be limited to a maximum of \$7.25 million unless information supporting the credit review changes;
3. Approves a CWSRF Program PFC of \$5,422,120 for the City's Project, comprised of \$2 million in ARRA principal forgiveness funds and \$3,422,120 in non-ARRA financing for a 20-year term at one percent (1%). The first repayment is 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 July 15, 2009, in accordance with Section IX (K) of the Policy. Division staff should have the discretion to approve up to a 120-day extension for good cause;

5. Conditions this approval such that the City must meet the following deadlines:
 - a. A financing agreement must be executed or be executable by July 15, 2009;
 - b. The Division must receive a completed Approval of Award request by July 25, 2009; and
 - c. The Division must receive a copy of an executed construction contract by July 25, 2009;
6. Conditions this approval such that the City 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;
7. Conditions this approval such that failure to comply with the ARRA will automatically terminate any provisions of the PFC that are authorized solely by the ARRA, including, but not limited to, provisions related to principal forgiveness. The City may still be eligible for CWSRF funding at the standard financing rate, if CWSRF Program funding is available;
8. Conditions this approval such that the City must adopt an updated authorized representative resolution prior to execution of a CWSRF Program financing agreement; and
9. Grants a waiver from the Policy, allowing reimbursement of eligible construction costs incurred after acceptance of the FPA by the City and prior to issuance of the PFC. Any construction costs incurred prior to issuance of the PFC are at the City's risk, and costs cannot be reimbursed until a financing agreement is executed. Issuance of a PFC does not guarantee a financing agreement will be executed.

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

 Jeanine Townsend
 Clerk to the Board