

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2011-0009**

AUTHORIZE FUNDING FROM THE CLEAN WATER STATE REVOLVING FUND (CWSRF)
TO THE COUNTY OF SAN LUIS OBISPO (COUNTY) LOS OSOS WASTEWATER PROJECT
(PROJECT), CWSRF PROJECT NO. C-06-5230

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on February 16, 1995, adopted the "*Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities*," (Policy) and amended it on March 17, 2009;
2. The State Water Board, on June 15, 2010, adopted the state fiscal year 2010/2011 CWSRF Program Priority List which included the County's Project in Priority Class A;
3. The Division of Financial Assistance (Division) has approved the Facility Plan for the County's Project on February 10, 2011, and the County agreed with the approval on February 11, 2011;
4. A credit review was completed on February 3, 2011, recommending a maximum CWSRF financing amount of \$86,208,416 for the Project, of which an estimated \$7.5 million in CWSRF principal forgiveness, assuming a 30-year term at 2.6 percent interest rate;
5. The County prepared an Environmental Impact Report (EIR) for the Project, distributed it to the public, and circulated it through the State Clearinghouse No. 2007121034;
6. The County certified the EIR, adopted a Mitigation Monitoring Program and a Statement of Overriding Considerations (SOC), and approved the Project on September 29, 2009;
7. The County filed a Notice of Determination with the San Luis Obispo County Clerk on September 30, 2009, and with the Governor's Office of Planning and Research on October 5, 2009;
8. The County adopted a SOC to substantiate its decision to approve the Project despite significant unavoidable impacts to 22 acres of locally important farmland;
9. The State Water Board has determined that significant unavoidable impacts to farmland will result from construction of the treatment plant portion of the Project; and
10. The State Water Board finds that the following specific economic, social, technological, and environmental benefits of the Project outweigh the significant unavoidable impacts to farmland:
 - a. The Project will allow the community of Los Osos to comply with the Central Coast Regional Water Quality Control Board's Resolution 83-13; and
 - b. The Project will eliminate discharges from onsite septic systems to alleviate groundwater contamination.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF financing agreement amount of \$86,208,416 for the proposed Project, with a repayment period of 30-years, and the first repayment due one year after completion of construction with an interest rate of one-half of the General Obligation Bond rate;
2. Conditions this approval by withdrawing this CWSRF Preliminary Funding Commitment (PFC) if the County does not sign the agreement by June 30, 2011, and in accordance with Section IX (K) of the Policy, allow Division staff the discretion to approve up to a 120-day extension of this PFC expiration date for good cause;
3. Conditions this approval by withdrawing the CWSRF PFC if the County does not issue notice-to-proceed with construction by June 30, 2012, and in accordance with Section IX (K) of the Policy, allow Division staff the discretion to approve up to a 120-day extension of this PFC expiration date for good cause;
4. Adopts the above SOC for the County's Project;
5. Requires, in accordance with the Governor's signing message of AB 2701 (Blakeslee), the County to repay the outstanding \$6,288,416 owed by the LOCSD to the CWSRF;
6. Requires the Project to be in compliance with the following:
 - a. USDA letter of conditions, dated September 16, 2010,
 - b. Coastal Development Permit issued on September 7, 2010 by the California Coastal Commission,
 - c. Final Biological Opinion issued by the USFWS,
 - d. Memorandum of Agreement between the State Water Board, USDA, County, and the California State Historic Preservation Officer executed July 24, 2010, and
 - e. Central Coast Regional Water Board WDR draft Order No. R3-2011-0001;
7. Conditions this approval that the following items shall be submitted before the financing agreement is executed by the State Water Board:
 - a. Authorized Representative Resolution,
 - b. Tax Questionnaire,
 - c. Dedicated Source of Revenue Resolution,
 - d. Updated Schedule of System Obligations,
 - e. Certificate of Compliance with Federal Laws and Authorities,
 - f. General Plan Compliance Certificate,
 - g. Letter of litigation, adverse audit findings, or ratepayer/contractor disputes (Policy Section IX.E.4),
 - h. Bond counsel letter stating the relationship between the County Assessment District #1 and LOCSD assessment district,
 - i. Certification of AB 2572 non-applicability,
 - j. Economic analysis for the selected alternative in compliance with the Water Recycling Funding Program Guidelines,

- k. Formal request by the Authorized Representative for CWSRF principal forgiveness and addressing livability standards commensurate with the CWSRF Intended Use Plan 2010/2011,
 - l. Draft or final USDA financing agreement, and
 - m. Bond counsel opinion with respect to proposed system obligations (Policy Section IX.E.5);
8. Conditions this approval that the following items shall be submitted before the final agreement is amended and any funds are disbursed by the State Water Board:
- a. Statewide General Permit for Landscape Irrigation Uses of Municipal Recycled Water from either the State Water Board or the Central Coast Regional Water Board,
 - b. A copy of the Title 22 recycled water engineering report submitted to the Department of Public Health,
 - c. Legal opinion of compliance with Articles XIII C and XIII D of the California State Constitution (Proposition 218),
 - d. Legal opinion on access and ownership of land on which construction activities will take place,
 - e. Final Water Conservation Plan,
 - f. Final recycled water use assurances must be submitted prior to issuance of an AOA, and
 - g. The County must initiate the collection of County Assessment District No. 1 upon passage of a Due Diligence resolution by the County to allow for sufficient funds to be accumulated prior to the initial debt service due date;
9. Conditions this approval, as determined by the County's credit review, with the following:
- a. The CWSRF Financing Agreement shall be secured on parity with the USDA loan for County Assessment District No. 1 revenues,
 - b. The County shall establish a Reserve Fund equal to one year's debt service prior to the construction completion date,
 - c. The County shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times the total annual debt service,
 - d. The County may not incur future senior debt. County future debt may be parity with CWSRF debt if Policy conditions are met (Policy Section X. G1),
 - e. The Financing Agreement shall be limited to a maximum of \$86,208,416, of which an estimated \$7,500,000 is CWSRF principal forgiveness. No more than \$79,920,000 shall be disbursed to the County, the remainder of which will be amortized over the term of the financing agreement; unless new information supporting the credit review changes and a supplemental credit review is performed,
 - f. When the assessment district for undeveloped properties is formed and approved, the revenues must become an additional dedicated source of security for the proposed CWSRF financing agreement,
 - g. County Assessment District #1 property owners that wish to prepay their assessment may do so. Any prepayments received will reduce assessment backed principal borrowed from the CWSRF, and
 - h. Grants and principal forgiveness provided by the State Water Board and any future source shall reduce the total CWSRF financing agreement amount;

10. Conditions this approval such that the County must obtain a final, adopted WDR from the Central Coast Regional Water Board prior to construction; and
11. Conditions this approval such that disbursements shall not occur until the Deputy Director for the Division finds that substantial progress has been made on construction using USDA funds, and to the best extent possible USDA funds will be expended before CWSRF funds are disbursed.
12. Conditions this approval such that if the County seeks to transfer the obligation under the CWSRF financing agreement to the LOCSD, or any other entity, the approval of any such transfer shall be presented to the State Water Board for consideration.
13. No later than December 6, 2011, will consider, at a Board meeting, reducing the interest rate established pursuant to Resolved #1. Such a reduction in interest rates would be considered in conjunction with how long the County operates the Project. Prior to the State Water Board's consideration of an interest rate reduction, the County shall provide an updated report to the State Water Board members, updating costs estimates, user service charges, and projected on-lot costs.

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 1, 2011.

AYE: Chairman Charles R. Hoppin
 Vice Chair Frances Spivy-Weber
 Board Member Tam M. Doduc
 Board Member Dwight P. Russell

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board