

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION -- DIVISION OF FINANCIAL ASSISTANCE
NOVEMBER 18, 2008**

ITEM 8

SUBJECT

CONSIDERATION OF A RESOLUTION APPROVING A CLEAN WATER STATE REVOLVING FUND (CWSRF) FINANCE COMMITMENT TO THE ANTIOCH (CITY) DEVELOPMENT AGENCY (AGENCY) FOR CONSTRUCTION OF THE MARKLEY CREEK REMEDIATION PROJECT (PROJECT); CWSRF PROJECT NO. C-06-5172-110

DISCUSSION

The Agency is seeking financial assistance from the CWSRF Program and the State Water Resources Control Board (State Water Board) to construct the Markley Creek (Creek) Remediation Project. The objective of this Project is to comply with Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) Cleanup and Abatement Order (CAO) Numbers R5-2002-0735 and 0736. The CAO was issued because burned and unburned municipal waste buried along the south and north banks was being discharged into the Creek after slope failure of the south bank. The sediment samples collected from the Creek exceeded the Total Threshold Limit Concentration (TTL) limits under *Title 22, California Code of Regulations for Hazardous Waste Criteria* for total metals. The Creek is the primary drainage course for the area, and is tributary to the San Joaquin River and the San Francisco Bay Estuary (Estuary). Completion of this Project will improve water quality in the Estuary.

This Project consists of removing existing trash from the Creek, re-grading its channel banks, installing fill material and erosion control, and landscaping. The Central Valley Regional Water Board approved the proposed Project. The City received all of the required permits for the Project, including U.S. Army Corps of Engineers 404 Permit, U.S. Fish, and Wildlife Service (USF&WS) and National Marine Fisheries Service Section 7 Consultation, California Department of Fish and Game Streambed Alteration Agreement, and San Francisco Bay Regional Water Board Section 401 Water Quality Certification.

The CWSRF Program can provide funding for projects that develop or implement an estuary *Comprehensive Conservation and Management Plan (CCMP)*. The Agency's Project meets the following Actions of the Estuary CCMP:

1. Action PO-1.8 - Develop and implement programs to prevent pollution of the Estuary by harmful pollutants like trash, bacteria, sediments, and nutrients. This Project removes the trash from the Creek and the Estuary.
2. Action PO-2.4 - Improve the management and control of urban runoff from public and private sources. The Project allows the Regional Water Boards to achieve this objective by removing toxic pollutants from the runoff to the Estuary.
3. Action PO-3.1 - Clean up contaminants currently affecting fish, wildlife, their habitat, and food supplies in the Bay and Delta. The Project will remove trash and prevent future contamination from the landfill from affecting fish, wildlife, habitat, and food supplies in the Estuary.

4. Action PO-4.1 - Increase regulatory incentives for municipalities through urban runoff and related programs, and to invest in projects that restore or enhance stream and wetland functions. This Project allows the State and Regional Water Boards, the U.S. Environmental Protection Agency (U.S. EPA), and USF&WS to achieve this objective with financial assistance using CWSRF.

The City prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Project. The IS/MND was distributed for public review and circulated through the State Clearinghouse (No. 2007052112) from May 21, 2007, through June 19, 2007. The City received five comments during the review period:

1. The Central Valley Regional Water Board—concurrence with the IS/MND.
2. The Contra Costa Water District—clarification regarding how the Project will adversely impact the Contra Costa Canal.
3. The East Bay Regional Park District—clarification regarding the location of park boundaries relative to the Project area and the impact the Project will have on the Markley Creek Watershed.
4. Archer-Norris on behalf of Somersville – Gentry, Inc.—reservations regarding the design of the Project not achieving the long-term isolation of wastes from the waters of Markley Creek and the long-term protection of the creek channel to adequately resist erosive forces.
5. TRC Companies, Inc. on behalf of GBF Holdings, LLC—correction regarding minor inconsistencies in the document text.

Responses to comments were adequately addressed in the final IS/MND. The City adopted the IS/MND and the Mitigation and Monitoring Reporting Plan and approved the Project on July 24, 2007. The Notice of Determination (NOD) was filed with the Governor's Office of Planning and Research (OPR) on June 5, 2008, and with the Contra Costa County Clerk on June 9, 2008. The State Water Board staff applied a Tier 2 review because this Project is an expanded use project and compliance with federal requirements was achieved through the U.S. Army Corps of Engineers permitting process. State Water Board staff has reviewed and considered the applicable environmental documents and determined that the Project will improve water quality. State Water Board will file an NOD with OPR following approval.

The City requested construction bids for the Project on April 29, 2008, and received a low bid of \$3,674,580. The City subsequently issued the Notice-to-Proceed with construction on July 3, 2008. Construction will be complete in December 2008. The eligible construction cost of the Project is estimated at \$3,674,580. The eligible Project cost, including planning, design, and construction allowance, is \$4,242,060. The City received a grant of \$750,000 from the California Integrated Waste Management Board. The Agency is asking for \$2.5 million from the CWSRF for this Project. The City will fund the remainder of the Project. The Agency also requests a 20-year repayment period with the first CWSRF repayment due one year after first disbursement.

The Agency is proposing to use tax increment revenue from Project Area 1 to pay back the financial assistance. The tax increment revenue for Project Area 1 will expire on July 15, 2028. The legal opinion from the City Attorney states there is no election or Proposition 218 requirement for Project Area 1 revenues.

An independent credit review, performed by California Municipal Statistics Inc. (Calmuni), analyzed the Agency's ability to repay a CWSRF financing agreement for the amount requested. A 20 year, \$2.5 million financing agreement at 2.6 percent interest rate will require an annual debt service payment of \$161,097. The Agency has three outstanding debt obligations supported by tax increment revenues generated within Project Area 1. With the information provided by the Agency, Calmuni analyzed the debt service coverage against the proposed CWSRF financing agreement, future O&M costs and ongoing capital improvement costs. Results indicate the Agency's proposed revenues are equal to at least 1.3 times total annual debt service. Calmuni estimated the Agency's additional financial capacity based on the debt service ratio and suggests a maximum financing amount of \$3,750,000.

The Agency has provided the Division with a schedule containing project milestones. These dates are included in the Division's facilities plan approval letter.

POLICY ISSUE

Should the State Water Board:

1. Approve a CWSRF Preliminary Funding Commitment (PFC) for the proposed Project, including a repayment period ending on or before July 15, 2028, with the first repayment due one year after the first disbursement?
2. Allow construction completed prior to plans and specifications (P&S) approval is eligible for CWSRF financing (typically, construction completed prior to P&S approval is not eligible for CWSRF)?
3. Condition this approval by withdrawing the CWSRF PFC, if the Agency does not sign the CWSRF financing agreement by September 30, 2009?
4. Give Division staff the discretion to approve a 90-day extension if the financing agreement is not signed by September 30, 2009?

FISCAL IMPACT

(as of 09/23/2008)	SFY	SFY	SFY	SFY
	2008-09	2009-10	2010-11	2011-12
Beginning Balance:	\$307,959,193	\$33,586,873	(\$45,281,364)	\$18,976,911
Estimated Repayments	\$201,056,093	\$217,382,264	\$227,382,264	\$237,382,264
Debt Service on Revenue Bonds	(\$31,893,104)	(\$31,758,441)	(\$31,456,429)	(\$30,228,204)
Estimated Capitalization Grants	\$46,965,399	\$45,000,000	\$0	\$0
State G.O. Bond proceeds (less state admin. match)	\$13,414,123	\$0	\$0	\$0
Local Match Credits	\$26,197,564	\$4,920,389	\$760,015	\$666,280
Est. SMIF Interest:	\$10,674,552	\$10,000,000	\$10,000,000	\$8,000,000
Estimated Disbursements	(\$433,037,195)	(\$162,302,027)	(\$71,795,728)	(\$17,578,557)
Subtotal	\$141,336,626	\$116,829,058	\$89,608,758	\$217,218,695
City of Merced, 4682-110	(\$17,000,000)	(\$20,000,000)		
Los Angeles County Sanitation District, 4001-560,4001-630	(\$40,000,000)	(\$16,950,932)		
Rosamond Community Services Dist, 4148-110	(\$8,350,000)			
City of Redding, 4971-230,-240,-250,-260	(\$4,883,253)	(\$15,358,930)	(\$14,584,114)	(\$2,330,934)
City of Brawley, 4502-110	(\$1,400,000)	(\$16,800,000)	(\$6,800,000)	
City of Antioch, 5172-110	(\$2,500,000)			
San Andreas Sanitary District, 5179-110	(\$4,606,500)	(\$6,493,500)		
Upper San Gabriel Valley, 5115-110,120,130,140		(\$14,867,060)	(\$4,247,733)	(\$4,483,717)
Balance	\$62,596,873	\$26,358,636	\$63,976,911	\$210,404,044

Notes:

Estimated Repayments include repayments from existing and future loans.

Estimated disbursements include disbursements remaining on executed loans and planned disbursements on projects with preliminary loan commitments. Local Match credits are the anticipated funds that will be contributed for local match loans included in "Estimated Disbursements"

REGIONAL WATER BOARD IMPACT

The Central Valley Regional Water Board issued CAO Nos. R5-2002-0735 and 0736 to the City. The proposed Project will assist the City to comply with the CAO. This Project also allows the State and Regional Water Boards to achieve Action PO - 4.1 (Increase regulatory incentives for municipalities, through urban runoff and other programs, to invest in projects that restore or enhance stream and wetland functions.) of the San Francisco Bay Estuary CCMP with financial assistance using CWSRF.

STAFF RECOMMENDATION

The State Water Board should:

1. Adopt a resolution approving a CWSRF PFC of \$2.5 million for the City and Agency's Project with a repayment period ending on or before July 15, 2028, and with the first repayment due one year after the first disbursement;

2. Allow construction completed prior to P&S approval to be eligible for CWSRF financing;
3. Condition this approval by withdrawing the CWSRF PFC if the Agency does not sign the CWSRF financing agreement by September 30, 2009; and
4. Give Division staff the discretion to approve a 90-day extension if the financing agreement is not signed by September 30, 2009.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO.

APPROVING A CLEAN WATER STATE REVOLVING FUND (CWSRF) FINANCE COMMITMENT TO THE ANTIOCH (CITY) DEVELOPMENT AGENCY (AGENCY) FOR CONSTRUCTION OF THE MARKLEY CREEK REMEDIATION PROJECT (PROJECT);
CWSRF PROJECT NO. C-06-5172-110

WHEREAS:

1. The Agency has requested \$2.5 million in financing the proposed Project to comply with Central Valley Regional Water Quality Control Board's Cleanup and Abatement Order (CAO) Numbers R5-2002-735 and 736. The CAO was issued because burned and unburned municipal wastes were buried along the south and north banks of Markley Creek (Creek), and a slope failure in the south bank of the Creek discharged waste into the Creek which is a tributary to the San Francisco Bay Estuary;
2. This Project achieves Actions P.O.-1.8, 2.4, 3.1, and 4.1 of the *Comprehensive Conservation and Management Plan* for the San Francisco Bay Estuary;
3. The State Water Board, on September 2, 2008, adopted the state fiscal year 2008/2009 CWSRF Program Priority List which included the Agency's Project in Priority Class C;
4. The Division of Financial Assistance (Division) approved the Project plan for the Agency's Project on October 2, 2008, and the Agency agreed with the approval on October 8, 2008;
5. The City started construction of this project before plans and specifications (P&S) approval. Typically, construction started before Final P&S approval is not eligible for CWSRF;
6. The City adopted an Initial Study/Mitigated Negative Declaration and Mitigation Monitoring Reporting Plan and approved the Project on July 24, 2007;
7. The City filed a Notice of Determination with Governor's Office of Planning and Research on June 5, 2008, and with the Contra Costa County Clerk on June 9, 2008;
8. State Water Board staff reviewed and considered the information contained in the applicable environmental documents and determined that the project will improve water quality;
9. The Agency is proposing to use the tax increment revenue from Project Area 1 to pay back the financial assistance. The legal opinion from the City Attorney states there is no election or Proposition 218 requirement for Project Area 1 revenues; and
10. An independent credit review performed on September 9, 2008 determined that the Agency qualifies for \$3.75 million and specified appropriate conditions for the financing agreement.

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THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF Preliminary Funding Commitment (PFC) of \$2.5 million for the Agency's Project, with a financing maturity day on or before July 15, 2028, and the first repayment due one year after the first disbursement;
2. Directs the Division to allocate \$2.5 million consistent with the construction schedule and availability of funds;
3. Allows construction completed prior to plans and specifications approval to be eligible for CWSRF financing; and
4. Includes the following conditions:
 - A. This CWSRF PFC will expire if the Agency does not sign the CWSRF financing agreement by September 30, 2009. Division staff may approve a 90-day extension if the financing agreement is not signed by September 30, 2009.
 - B. As determined by the Agency's credit review, the financing agreement is subject to the following conditions:
 - a. The Financing Agreement shall be secured on parity with the outstanding 2000 Tax Allocation Refunding Bonds, and
 - b. The Agency shall fund the Reserve Fund (one year's debt service) from available cash in the Project Area 1 Capital Projects Fund prior to CWSRF financing.

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 Resources Control Board held on November 18, 2008.

Jeanine Townsend
Clerk to the Board