



October 19, 2018

State Water Resources Control Board  
Attn: Ms. Jeanine Townsend, Clerk  
1001 "I" Street, 24<sup>th</sup> Floor  
Sacramento, CA 95814

*Sent via email to: [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)*

**Subject: Comment Letter – November 27, 2018 Board Meeting;  
CWSRF Policy Amendments**

Dear Board Members:

Poseidon Water LLC appreciates the opportunity to provide these comments on the proposed CWSRF Policy Amendments, released on September 14, 2018 ("SRF Policy Amendments").

Poseidon Water relies on unique, project-specific partnerships to address water supply, wastewater treatment and water recycling needs of our public and private sector clients. Our leading area of specialty is in large-scale seawater reverse osmosis desalination plants, and we are engaging in cutting edge water recycling projects. Poseidon's approach combines state-of-the-art technology with innovative contracting practices and a disciplined development process, resulting in clean, efficient and environmentally friendly solutions for water-challenged communities in California and beyond.

Poseidon's comments on the SRF Policy Amendments are directed to the definition of eligible applicants and projects for Water Recycling Funds, and specifically to a potential "gap" between eligibility for CWSRF funding under federal and state law, and the current Water Recycling Funding Program ("WRFP") Guidelines. To begin, Poseidon fully supports the proposed SRF Policy Amendments which modify the definitions of eligible applicants and projects to make the Policy consistent with recent federal and state law.

As Board Members may be aware, in 2014 the federal Water Resources Development Act (WRDA) was amended in a number respects, including the definition of eligible projects and applicants for SRF funding. (*See*, HR3080, Sec. 5003 at p. 131.) The 2014 amendments eliminated the prohibition of private projects/applicants from being able to access SRF funds and is now codified at 33 U.S.C. §1383(c). Prior to this amendment, §1383(c) read, in relevant part: "The amounts of funds available to each State water pollution control revolving fund shall be

used only for providing financial assistance... to any municipality, inter-municipal, interstate, or State agency for construction of publicly owned treatment works.”

In 2015, and after the WRDA amendments were adopted, the State Water Board sponsored legislation to amend Water Code §13480 (which governs administration of the SRF in California) that would make state law consistent with the amendments to 33 U.S.C. §1383(c). (See, AB 1531, as introduced, March 23, 2015, §40 at p. 36.) AB 1531 was adopted and signed into law, effective January 1, 2016.

The SRF Policy Amendments make important, substantive, changes to the definitions of eligible “Applicants” (SRF Policy Amendments at p. 2) and “Projects” (SRF Policy Amendments at p. 4) which are consistent with the federal and state laws noted above, and Poseidon supports these proposed changes. However, section IV (Program Management) of the SRF Amendments contains language that arguably conflicts with these new definitional changes, and thus *does not* conform with current federal and state law.

Section IV describes the process by which DFA staff will evaluate and ultimately “score” applications for SRF financing, based on the type and purpose of the project. One type of project recognized for funding are “Water Recycling” projects that result in improving water supply needs. However, in describing what Water Recycling projects are eligible for funding, the SRF Amendments simply states: “Project must meet the requirements of the *Water Recycling Funding Program Guidelines*.” (SRF Policy Amendments at p. 7.)

The Water Recycling Funding Program Guidelines were last amended on June 16, 2015. Under these Guidelines, private sector applicants are not recognized as eligible recipients of either Planning Grants or Construction Funding. According to the WRFPP Guidelines:

- “Only local public agencies are eligible to receive a planning grant.” (WRFPP Guidelines at p.3)
- “Depending upon the funding source, eligible applicants are local public agencies, 501(c)(3) nonprofit organizations qualified to do business in California, public utilities, federally recognized Indian tribes, state Indian tribes listed on the Native American Heritage Commission’s California Tribal Consultation List, and mutual water companies.” (WRFPP Guidelines at p.7)

Poseidon is informed by State Board staff that proposed changes to the WRFPP Guidelines are expected to be made in 2019 to conform with the SRF Policy Amendments being considered by the Board here. Presumably, the definitional conflict noted above will be resolved. However, before that can be completed, the definitional conflict will prevent otherwise qualified Water Recycling projects from being eligible for consideration under the CWSRF Policy. Poseidon believes this issue should be resolved, either by language changes to the draft SRF Policy

Amendments, the adopting resolution, or appropriate language in the final staff report for the SRF Policy Amendments that acknowledge the putative definitional conflict and stating the Board's intent that otherwise qualified Water Recycling projects are not rejected because the WRFP Guidelines have not been updated.

One possible solution would be to drop a footnote to the Water Recycling provision on page 7 of the SRF Policy Amendments to clarify the State Water Board's intent to make CWSRF Policy and the WRFP Guidelines consistent with federal and state law, as such:

**"Water Recycling: Projects must meet the requirements of the *Water Recycling Funding Program Guidelines*.<sup>1</sup>**

<sup>1</sup> The State Water Board expects to approve revised WRFP Guidelines in 2019 to conform with existing federal and state law, as well as this Policy, regarding CWSRF funding eligibility, and until those Guidelines are revised and approved, it is the intent of the State Water Board that the definitions regarding eligible "Applicants" and "Projects" contained in this Policy shall control.

Lastly, we encourage the State Water Board to clarify that committed private capital can constitute the matching funds for purposes of project scoring under the SRF program, and that the State Water Board include public-private partnerships that meet its goals for the SRF program in future Intended Use Plans.

Thank you for the opportunity to provide these comments on the draft SRF Policy Amendments.

Sincerely,



Peter MacLaggan  
Vice President