

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2013-0019**

ADOPTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM
PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF STOCKTON'S (CITY'S)
TUXEDO AVENUE SEWER REHABILITATION PROJECT (PROJECT), CWSRF PROJECT
NO. C-06-7085-110

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on March 17, 2009, adopted amendments to the *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities* (Policy);
2. The Project is listed on the CWSRF Program Priority List in Priority Class D;
3. In accordance with the CWSRF Intended Use Plan for Federal Fiscal Year (FFY) 2013, adopted by the State Water Board on November 6, 2012, principal forgiveness is available. As a disadvantaged community, the City may receive 50 percent principal forgiveness for eligible Project costs, up to \$3 million in principal forgiveness.
4. The Division of Financial Assistance (Division) issued an Amended Facility Plan Approval (FPA) for the City's Project and the City agreed with the content and conditions of the Amended FPA;
5. The City is the lead agency under the California Environmental Quality Act (CEQA) for the Project, and complied with CEQA and CEQA Guidelines. The City prepared a Notice of Exemption (NOE; State Clearinghouse No. 2009128058) for the Project;
6. The City filed an NOE with the San Joaquin County Clerk on September 29, 2009, and the Governor's Office of Planning and Research on December 10, 2009;
7. The City's environmental documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. The Project will not result in any significant adverse water quality impacts;
8. The Project qualifies for a Section 15302 (Class 2) categorical exemption from the CEQA Guidelines; and
9. The City filed for bankruptcy protection on June 28, 2012; therefore, the City's Project is considered non-routine and the Preliminary Funding Commitment must be presented to the State Water Board for approval.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$1,625,000 in principal forgiveness for the City's Project, under the following conditions:


- A. The City shall comply with the Special Conditions in the Amended FPA.
- B. This PFC shall expire if the City does not sign the CWSRF financing agreement by April 30, 2014. In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120-day extension for good cause;
- C. Before execution of the CWSRF financing agreement, the City shall provide an opinion from the City's counsel, documenting that counsel has reviewed the financing agreement, and confirming the following:
 - i. The City's authority to execute a legal, valid, and binding financing agreement with the State Water Board, and to pledge funds in the escrow account toward such agreement;
 - ii. No pending or anticipated litigation, audits, or disputes exist against the City that might detrimentally affect the pledged revenue source or the City's ability to implement the Project;
 - iii. The City's wastewater rates were adopted in compliance with applicable state law, including Article XIID of the California Constitution;
 - iv. There is no provision or other legal impediment to the City's authority or discretion to adopt, require, or utilize a project labor agreement that includes the tax payer protection provisions of section 2500 of the California Public Contract Code; and
 - v. The Project is being conducted solely within existing public utilities easements, and that the City has the necessary property rights.
- D. Before execution of the CWSRF financing agreement, the City shall establish an Escrow Account in an amount equal to \$1,625,000 that shall be maintained until released by the Division upon completion of the Project. The Deputy Director of the Division (or Division designee) will be an authorized signatory to the associated Escrow Deposit and Reimbursement Agreement, and the account will require both the Deputy Director and the City's Authorized Representative to sign for any withdrawals from the Escrow Account;
- E. Before execution of the CWSRF financing agreement, the City shall adopt a resolution dedicating the Escrow Account as security for the proposed CWSRF financing agreement. This dedicated source of revenue shall be subject to a lien and pledge as security for the obligation. With respect to this dedicated Escrow Account, the City may not incur future debt;
- F. The State Water Board will not disburse funds under the financing agreement until the City has provided satisfactory evidence to the Division that the Escrow Account has been established, fully funded, and pledged;
- G. The City shall continue to meet the debt service coverage on current outstanding wastewater debt; and

- H. Unless information supporting the credit review changes and a supplemental credit review is performed, the financing agreement shall be limited to a maximum of \$1,625,000 (with a 20-year term, at an interest rate of 1.9 percent), with the principal forgiven upon completion of the Project.
- 2. Directs Division staff to allocate \$1,625,000 consistent with the construction schedule and availability of funds.

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 July 23, 2013.

- AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Steven Moore
Board Member Dorene D'Adamo
- NAY: None
- ABSENT: Board Member Tam M. Doduc
- ABSTAIN: None



Jeanine Townsend
Clerk to the Board