

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE
JANUARY 10, 2012**

ITEM 4

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF RIO DELL'S (CITY) WASTEWATER TREATMENT PLANT (WWTP) UPGRADE AND DISPOSAL PROJECT (PROJECT)

DISCUSSION

In accordance with the State Water Resources Control Board's (State Water Board's) *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), amended on March 17, 2009, projects on the adopted priority list need State Water Board approval to receive CWSRF funding. The State Water Board may approve a CWSRF PFC after issuance of a project Facility Plan Approval (FPA). The Division of Financial Assistance (Division) issued the FPA for the City's Project, and the City agreed with the content and conditions of the FPA. The Project is listed on the CWSRF Program's current Project Priority List in Priority Class C. The Project is also included in the CWSRF Program's current Intended Use Plan (IUP).

In accordance with Section IX.K of the Policy, a PFC may be approved by the Deputy Director of the Division if the Project is routine and non-controversial. The Project is considered non-routine due to pending litigation against the City; therefore, the PFC must be presented to the State Water Board for consideration.

PROJECT INFORMATION

The City is located in Humboldt County approximately 30 miles south of Eureka. The City's WWTP is located on City property at the west end of Hilltop Drive, adjacent to the Eel River. The City's WWTP was constructed in 1978. It is designed to treat, and currently permitted to discharge, a daily average flow of 0.9 million gallons per day (MGD). Actual daily flow averages approximately 0.5 MGD. The treatment process includes primary clarifiers, rotating biological contactors (RBCs), and secondary clarifiers. Dewatered sludge is applied to a nearby property owner's agricultural land.

The City's discharge is regulated per Waste Discharge Requirements (WDR) Order No.R1-2011-0054 (National Pollutant Discharge Elimination System [NPDES] Permit No. CA0022748). The WWTP discharges treated effluent to the Eel River (a 303-d listed waterbody) from October 1 to May 14. Discharge to the Eel River is prohibited from May 15 through September 30, during which time the City discharges to seasonal percolation ponds on a gravel bed adjacent to the Eel River.

The Project is necessary to comply with North Coast Regional Water Quality Control Board (North Coast Water Board) Cease and Desist Order (CDO) No. R1-2005-0034, which requires the City to address effluent surfacing on gravels outside the embankment of the percolation ponds. The City's WWTP is also old and no longer functioning properly.

The City is incurring mandatory minimum penalties associated with discharges to the Eel River, which are currently estimated at \$418,000. The proposed Project consists of improvements at the City's WWTP, and construction of an effluent transmission force main and summertime irrigation system to eliminate discharges to the City's seasonal percolation ponds.

Proposed WWTP improvements include: a new headworks pumping system; a combination extended aeration and aerobic digestion system; a treated effluent pumping station; an operations building expansion, a pre-engineered sludge drying unit, and electrical upgrades. It is anticipated that the majority of the new WWTP components will be located at the southern end of the existing WWTP site, with many of the existing facilities abandoned in place.

Approximately 13,000 linear-feet of high-density polyethylene pipe (HDPE) transmission force main will be constructed to convey treated effluent to the City's Mozzetti irrigation site. A treated effluent Type II irrigation disposal system will be constructed. Type II irrigation is irrigation above the agronomic rate, which means some effluent will discharge to groundwater. An anti-degradation analysis was completed and showed the Type II irrigation disposal system will not degrade groundwater. North Coast Water Board staff concurred with this conclusion in a letter dated August 10, 2010.

Effluent will be discharged to the Mozzetti irrigation site every day from May 15 to September 30 of each year, thereby eliminating discharges to the existing percolation ponds. During the winter season, October 1 to May 14 each year, effluent will continue to be discharged to the Eel River in accordance with the required discharge ratio of 100:1.

ENVIRONMENTAL REVIEW

The City prepared an Environmental Impact Report (EIR) for a larger project (the proposed CWSRF Project No. C-06-7401-110 is a revised subset of the larger project). The EIR was distributed to the public and circulated through the State Clearinghouse (SCH; No. 2007062006) for review from October 4, 2007 through November 19, 2007. The City received 57 comment letters; however, most of the comments were not Project specific. Comments were received from 1) the State Water Board, 2) the North Coast Water Board, 3) the California Department of Conservation, Division of Land Resource Protection, 4) the California Department of Transportation (CalTrans), 5) County of Humboldt (County), Department of Public Works, 6) the County, Community Development Services, Planning Division, 7) the Metropolitan Community Neighbors, 8) the Humboldt County Farm Bureau, 9) the Friends of the Eel River, and 10) several individuals.

The City held a public meeting on November 6, 2007 to allow the public an opportunity to comment on the draft EIR. Comments received during the public meeting included: 1) EIR inadequacies; 2) potential impacts to natural habitats; 3) the potential for treated effluent to be sprayed onto residential property; 4) potential impacts to drinking water supplies; 5) inadequacy of the public noticing of the draft EIR and requests for more time to review and provide comments; and 6) suggestions for spray irrigation on the Scotia Tree Farm. As a result of the comments received, the City extended the review period through December 7, 2007. Following the review period, the City replied to all the comments, provided clarifications, made the

applicable revisions, and included them in the final EIR. One change included the addition of an alternative (Alternative 5), which will not result in any significant adverse environmental impacts or new significant environmental impacts that would require the preparation of a Supplemental or Subsequent EIR.

The City certified the final EIR, adopted a Mitigation Monitoring and Reporting Program (MMRP), and approved the larger project (the proposed Project No. 7401-110 is a revised subset of the larger project) on May 20, 2008. The City filed a Notice of Determination (NOD) with the Humboldt County Clerk on May 21, 2008 and the Governor's Office of Planning and Research (OPR) on May 27, 2008.

Although the City anticipated completing the full build-out of a new wastewater treatment facility (WWTF) in future phases (as discussed under Alternative 5 in the EIR), the City constructed an interim project (CWSRF Project No. C-06-4922-110) that improved the WWTF treatment and biosolids processes (a subset of Alternative 1). The City prepared an addendum to the EIR (Addendum No. 1) to analyze the interim project. The City held a public meeting on June 2, 2009 to receive comments on the Addendum No. 1. No issues were raised. The City certified the Addendum EIR No. 1 and approved the interim project on June 2, 2009. The City filed an NOD with the Humboldt County Clerk on June 4, 2009 and OPR on June 8, 2009.

The City prepared a second addendum to the EIR (Addendum No. 2) to address the Project, analyze revisions to applicable mitigation measures, the addition of two potential transmission pipeline route options (Routes 1 and 2), and a change from Type I irrigation to Type II flood irrigation (this eliminated the need for a storage pond). Addendum No. 2 was distributed to the public and circulated through the SCH for a 15-day expedited review from September 20, 2010, to October 5, 2010. The City received a comment from Caltrans to obtain an encroachment permit for any work within the state right-of-way. No other issues were raised. The City responded to the Caltrans comments by obtaining an encroachment permit. The City certified the Addendum No. 2, adopted a revised MMRP, and approved the Project on October 5, 2010, and filed an NOD with the Humboldt County Clerk on October 7, 2010 and OPR on November 3, 2010.

The Eel River, riparian woodland vegetation, perennial creeks, and seasonal wetlands and ponds are located in the area surrounding the Project. The WWTF site contains ruderal vegetation on the eastern edge and is located 150 feet from the Eel River. The Project will be confined to the existing WWTF boundary, along City streets and the Highway 101 Bridge, and on the lower Mozzetti Ranch pastures.

The Eel River provides suitable habitat to support federally listed anadromous fish species and the federally threatened green sturgeon (*Acipenser medirostris*). The pipeline will cross the southbound Highway 101 Bridge, and will be constructed to avoid impacting the riparian vegetation.

Weedy non-native plants dominate the pasture area in the lower Mozzetti Ranch. The lower Mozzetti Ranch pasture is adjacent to the Eel River, where riparian woodland habitat occurs along the right bank of the river. The woodland riparian forest has the potential to support nesting and foraging bird species, including: the bald eagle (*Haliaeetus leucocephalus*; a delisted species due to recovery), the black-capped chickadee (*Poecile atricapillus*; no federal status), the Cooper's hawk (*Accipiter cooperii*; no federal status), the ferruginous hawk (*Buteo regalis*; no federal status), the northern harrier (*Circus cyaneus*; no federal status), the northern spotted owl (*Strix occidentalis caurina*; federally threatened), the osprey (*Pandion haliaetus*; a

federal species of concern), the red-shoulder hawk (*Buteo lineatus*; a federal species of concern), the sharp-shinned hawk (*Accipiter striatus*; no federal status), the tri-colored blackbird (*Agelaius tricolor*; no federal status), the western snowy plover (*Charadrius alexandrinus nivosus*; federally threatened), the western yellow-billed cuckoo (*Coccyzus americanus*; a federal candidate species), the white-tailed kite (*Elanus leucurus*; a federal species of concern), the yellow warbler (*Dendroica petechia brewsteri*; a federal species of concern), and other potential bird species.

The Siskiyou checkerbloom (*Sidalcea malviflora ssp. patula*; not federally listed) has the potential to be on the Mozzetti property. However, no individual plants were identified and the property is under intense agricultural and commercial development. Additionally, the federally threatened marbled murrelet (*Brachyramphus marmoratus*), and the Pacific fisher (*Martes pennanti pacifica*; a species currently under review for ESA listing) has the potential to be in the Project area. However, no individuals were observed during surveys.

The City searched the California Department of Fish and Game (DFG) California Natural Diversity Database, the California Native Plant Society's (CNPS) Inventory of Rare and Endangered Vascular Plants, the CalFlora database, and reviewed species lists from the United States Fish and Wildlife Service and the United States Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. On March 18, 2009, State Water Board staff conducted a site visit of the existing WWTF, and determined that the existing WWTF will not impact federal special-status species and other biological resources, as there is no suitable habitat to support those species. An updated 2010 biological evaluation was also completed for the Project area. No federal special status species were observed in the Project area, or on the Mozzetti Ranch property. The Project will not change the land use of the irrigation site (the site will remain in agricultural production), and thus, the irrigation site will continue to provide suitable foraging habitat for wildlife. The City will implement mitigation measures to reduce Project biological resources impacts to a less than significant level.

Several bird species listed under the federal Migratory Bird Treaty Act (MBTA) have the potential to occur in the riparian woodland forest (adjacent to the irrigation site). There is no suitable nesting or foraging habitat at the WWTF site. The adjacent riparian woodland habitat near the irrigation site provides suitable nesting and foraging opportunities. There will be no impacts to the riparian woodland habitat as the Project will occur away from the riparian habitat. The City will implement mitigation measures to ensure less than significant impacts will occur to migratory bird species.

The Project area is located in the North Coast Air Basin (Basin), which is regulated by the North Coast Unified Air Quality Management District (NCUAQMD). The Basin is in attainment or unclassified for all federal criteria pollutants. The Project construction will be short-term, and the City will implement mitigation measures to reduce Project air emissions to a less than significant level (less than NCUAQMD air quality criteria significance thresholds and below federal *de minimis* levels).

The State Water Board's Cultural Resources Officer (CRO) reviewed the documents submitted by the District for this Project. The CRO determined that no historic properties will be affected by the Project.

State Water Board staff will file an NOD with the OPR following funding approval.

FISCAL IMPACT

Principal Forgiveness Analysis

As outlined in the CWSRF IUP, adopted by the State Water Board on May 17, 2011, \$97,770,482 in principal forgiveness is available to two categories of disadvantaged communities: 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and 2) Other Disadvantaged Communities.

The City's estimated 2010 median household income (MHI) is \$37,024, approximately 59% of the State of California MHI. The City's estimated 2010 population is 3,198 persons. As of March 1, 2011, the City's wastewater rates are \$68.37 per month (1.7 percent of the community's MHI). As a small severely disadvantaged community with wastewater user rates more than 1.5 percent of the community's MHI, the City qualifies for Category 1 principal forgiveness. The City may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness. With an estimated eligible cost of \$13,424,895, the Project qualifies for \$6 million in principal forgiveness.

Fiscal Impact on Applicant's Finances

A credit review was completed to analyze the City's ability to enter into a financing agreement for the amount of \$13,424,895 for construction and allowances. The credit review provides recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity and reserve fund requirements for the financing agreements.

The total project costs are \$13,424,895. The City qualifies for \$6 million in principal forgiveness. Upon satisfaction of the conditions for principal forgiveness, \$7,424,895 would remain due under the low-interest long term financing. As a small, severely disadvantaged community, with rates more than 1.5 percent of the City's MHI, the City qualifies for an extended term of 30 years.

The most recent rate increases were approved February 22, 2011, pursuant to Proposition 218. Current monthly service charges are \$68.37 per single family residence. The rate increase was effective March 1, 2011. An annual rate increase of three percent for inflation became effective July 1, 2011.

The debt service payments under the proposed CWSRF financing are projected to begin in December 2014. After allowing for operations and maintenance costs (O&M) estimated at \$653,777 upon completion of the project, the net revenues of the sewer system fund are projected to be approximately \$483,765.

The City has one outstanding debt secured by its Sewer Enterprise Fund, a bridge loan provided by the Rural Community Assistance Corporation to assist with Project planning and design costs. The City will repay this debt upon receipt of disbursement of planning and design funds under the CWSRF financing agreement. The City has no other debts secured by its Sewer Enterprise Fund.

Security and Source of Financing Repayment

The City shall dedicate the net revenues of its Sewer Fund to the repayment of the proposed financing agreement.

The City is eligible for extended term financing. A financing agreement for the amount of \$13,424,895 with \$6 million in principal forgiveness and \$7,424,895 for 30 years at an estimated interest rate of 2.20 percent will have an annual debt service of \$340,707. Comparing the proposed debt service to net revenues results in debt service coverage of 1.42 times. This exceeds the CWSRF policy requirement that net revenues be at least 1.10 times the total debt service.

Comparative Revenues and Expense Analysis

The revenues and expenses for the City’s sewer system fund for fiscal years 2008/09 and 2009/10 and the budgeted amounts for fiscal year 2010/11 and 2011/12 are summarized below:

Fiscal Year	2008/09	2009/10	2010/11 Budget	2011/12 Budget
Sewer Service Charges	\$795,846	\$831,200	\$1,020,925	\$1,113,632
Connection Fees	\$3,450	\$6,900	\$3,250	\$4,600
Interest Revenues	\$281	\$14,317	\$147	\$15
Other & Non-Operating Revenues	\$3	\$97,103	\$18,915	\$19,295
Total Revenues	\$799,580	\$949,520	\$1,043,237	\$1,137,542
Operating Expenses	\$696,917	\$699,446	\$776,806	\$653,777
Net Revenues Available for Debt Service	\$102,663	\$250,074	\$266,431	\$483,765
Proposed Debt Service	\$0	\$0	\$0	\$340,707
Debt Service Coverage	n/a	n/a	n/a	1.42

It is anticipated that the North Coast Water Board will permit the estimated \$418,000 in mandatory minimum penalties incurred by the City to be applied toward the Project.

The City shall fund a reserve fund equal to one year’s debt service from available cash prior to construction completion. A reserve fund in the amount of one year’s debt service shall be maintained so that in the event of non-payment, there are funds available to make the payment.

It is recommended that the State Water Board cap its approval of financing to \$13,424,895, with \$6 million in principal forgiveness.

Fiscal Impact on the CWSRF Program

As of 11/15/2011	SFY 2011-12	SFY 2012-13	SFY 2013-14	SFY 2014-15	SFY 2015-16
Beginning Balance:	\$432,604,699	\$69,744,680	(\$117,682,934)	(\$98,129,931)	\$30,695,076
Estimated Repayments	\$219,792,060	\$229,792,060	\$239,792,060	\$249,792,060	\$259,792,060
Debt Service on Revenue Bonds	(\$30,228,204)	(\$27,714,204)	(\$23,821,829)	(\$20,966,279)	(\$19,356,506)
Estimated Capitalization Grants	\$68,764,114	\$32,087,000	\$28,800,000	\$28,800,000	\$28,800,000
Local Match Credits	\$3,389,448	\$2,544,666	\$920,590	\$962,435	\$1,087,970
Est. SMIF Interest:	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000
Estimated Disbursements	(\$593,940,601)	(\$349,814,776)	(\$201,685,116)	(\$129,717,344)	(\$33,220,515)
Subtotal	\$101,881,517	(\$41,860,574)	(\$72,177,229)	\$32,240,942	\$269,298,086
Pending PFCs	Estimated Disbursements				
City of San Clemente, #4516-110		(\$7,422,003)	(\$4,948,002)		
City of San Diego, #4905-110	(\$9,411,837)	(\$11,057,258)			
South Bayside System Authority, #5216-120	(\$13,000,000)	(\$19,000,000)	(\$4,329,000)		
City of Turlock, #5256-110	(\$4,000,000)	(\$11,000,000)	(\$9,000,000)		
City of Redding, #5380-110	(\$2,000,000)	(\$10,000,000)	(\$600,000)		
City of Vista, #5698-110		(\$5,542,770)			
City of Santa Barbara, #6401-110	(\$1,600,000)				
City of Stockton, #7085-110	(\$1,625,000)				
City of Rio Dell, #7401-110	(\$500,000)	(\$6,924,895)			
Valley Center MWD, #7454-110		(\$437,268)	(\$1,083,204)	(\$180,528)	
Valley Center MWD, #7454-120		(\$4,003,166)	(\$4,095,996)	(\$1,365,338)	
Valley Center MWD, #7454-130		(\$435,000)	(\$1,896,500)		
Ending Balance on June 30	\$69,744,680	(\$117,682,934)	(\$98,129,931)	\$30,695,076	\$269,298,086
Notes:					
<ul style="list-style-type: none"> • The State Water Board approved the sale of up to \$300 million in Revenue Bonds in September 2005 for the CWSRF Program to cover any shortfall of funds. • Estimated repayments include repayments from existing and future financing. • Estimated disbursements include disbursements remaining on executed financing and planned disbursements on projects with preliminary funding commitments. • Local match credits are the anticipated funds that will be contributed for local match financing included in "Estimated Disbursements." • Excludes Principal Forgiveness funds 					

Fiscal Impact on CWSRF Program Principal Forgiveness

As of 11/15/2011:	Principal Forgiveness			
	Category 1	Category 1 SCG fees	Category 2	Total
Beginning Balance	\$57,662,289	\$1,000,000	\$40,108,193	\$98,770,482
City of Williams, #4049-110	(\$6 million)			
City of San Diego, #4905-110			(\$3,000,000)	
City of Redding, #4971-240			(\$3,000,000)	
City of Modesto, #5175-210			(\$3,000,000)	
Russian River County Sanitation District, #5201-110	(\$1,942,225)			
San Luis Obispo (Los Osos), #5230-110	(\$7,500,000)			
Calaveras County Water District, #5249-110	(\$4,420,880)			
Heber Public Utility District, #5302-110	(\$6 million)			
Victor Valley Wastewater Rec Authority, #5376-110			(\$3,000,000)	
City of Tehachapi, #5563-110			(\$2,121,030)	
Susanville Sanitary District, #5727-110			(\$1,392,595)	
City of Redding, #5835-110			(\$1,233,052)	
City of East Palo Alto, #5956-110			(\$276,250)	
City of Los Angeles, #7055-110			(\$3,000,000)	
City of Stockton, #7085-110			(\$1,625,000)	
Santa Nella County Water District, #7132-110			(\$2,146,875)	
Earlimart Public Utility District, #7190-110			(\$359,707)	
Eastern Municipal Water District, #7203-110			(\$5,000,000)	
City of Rio Dell, #7401-110	(\$6 million)			
City of Redding, #7456-110			(\$1,682,280)	
City of Anaheim, #7620-110			(\$1,560,479)	
City of Anaheim, #7622-110			(\$374,383)	
City of Anaheim, #7630-110			(\$513,178)	
Planada CSD, #7649-110	(\$285,000)			
City of Yuba City, #7668-110			(\$3,000,000)	
Sutter County, #7732-110	(\$400,180)	(\$1,000,000)		
City of Anaheim, #7800-110			(\$923,344)	
Remaining Balance	\$21,795,004	\$0	\$2,900,020	\$24,695,024

Pending Litigation

On September 6, 2011, the City rejected Mercer-Fraser's low bid as non-responsive, triggering two separate lawsuits. The first lawsuit, Baratti v. City of Rio Dell, seeks to enjoin the City from awarding to any other bidder than Mercer-Fraser. The second, Mercer-Fraser v. City of Rio Dell and the State Water Resources Control Board, seeks a writ of mandate against the City regarding the award. It also seeks to restrict CWSRF financing on the Project. The hearing on this second lawsuit has been set for March 23, 2012.

Pursuant to the CWSRF Policy, while the Division may proceed with the initial financing agreement and allow planning and design reimbursement, the Division will not amend the financing agreement to incorporate the bid costs or disburse funds for construction until the City provides a legal opinion certifying that (1) all pending bid and/or contract disputes have been resolved; and (2) there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the City's payment source, (b) the ability of the City to agree to pay the CWSRF financing, or (c) the ability of the City to manage and implement the Project.

POLICY ISSUE

Should the State Water Board approve the Resolution to:

1. Approve a CWSRF PFC of \$13,424,895 for the City's Project with an extended term of 30 years and \$6 million in principal forgiveness?
2. Direct Division staff to allocate \$13,424,895 consistent with the construction schedule and availability of funds?
3. Condition this approval by withdrawing the CWSRF PFC if the City does not sign an initial CWSRF financing agreement by June 29, 2012? 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.
4. Condition this approval to require the City to implement mitigation measures 6-5 as identified in the EIR, the Addendum No. 2 and the MMRPs to reduce potential impacts to migratory bird species in accordance with the MBTA?
5. Condition this approval, as determined by the City's credit review, with the following:
 - a. The City shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times total annual debt service;
 - b. The City must implement all approved rate increases;
 - c. The City shall establish a Reserve Fund equal to one year's debt service from available cash prior to the construction completion date;
 - d. The City may not incur future senior debt. Future debt may be on parity with CWSRF debt if Policy conditions are met (CWSRF Policy Section X.G1); and
 - e. The financing agreement shall be limited to a maximum of \$13,424,895, with an interest rate of one-half the most recent general obligation bond rate as of the date the PFC is approved and a 30-year repayment term, and with the expectation that \$6 million in principal will be forgiven upon satisfaction of the terms and conditions of the financing agreement. If information relating to the credit review changes a supplemental credit review may be required.
6. Condition this approval to require the City to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the City's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any new settlement agreements or revised court rulings within 15 days of such event?
7. Direct Division staff to incorporate bid costs into the financing agreement and disburse funds for construction only after the City provides the following:
 - a. A legal opinion certifying that the City has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer; and

- b. A legal opinion certifying that (1) all pending bid and/or contract disputes have been resolved; and (2) there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the City's payment source, (b) the ability of the City to agree to pay the CWSRF financing, or (c) the ability of the City to manage and implement the Project.
8. Condition this approval to require the City to sign an amended financing agreement that incorporates bid costs on or before January 10, 2013? Division staff may approve up to a 120-day extension for good cause.

REGIONAL BOARD IMPACT

The City's Project is necessary to comply with WDR Order No. R1-2011-0054 (NPDES Permit No. CA0022748) and CDO No. R1-2005-0034, issued by the North Coast Water Board.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

ADOPTION OF A CLEAN WATER STATE REVOLVING FUND PROGRAM PRELIMINARY FUNDING COMMITMENT FOR THE CITY OF RIO DELL'S WASTEWATER TREATMENT PLANT UPGRADE AND DISPOSAL PROJECT

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on March 17, 2009, amended the *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*;
2. The State Water Board's CWSRF Program Project Priority List (PPL), amended on April 12, 2011, included the City's CWSRF Project No. C-06-7401-110;
3. The Division of Financial Assistance (Division) issued a Facility Plan Approval (FPA) for the City's Project and the City agreed with the content and conditions of the FPA;
4. Per the CWSRF Intended Use Plan, adopted by the State Water Board on May 17, 2011, \$97,770,482 in principal forgiveness is available;
5. As a small (less than 20,000 persons), severely disadvantaged community (median household income [MHI] less than 60 percent of the statewide MHI) with wastewater user rates more than 1.5 percent of the community's MHI, the City may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness;
6. The City prepared an Environmental Impact Report (EIR; State Clearinghouse No. 2007062006) for a larger project (the Project is a revised subset of the larger project);
7. The City certified the EIR, adopted a Mitigation Monitoring and Reporting Program (MMRP), and approved the larger project (the Project is a revised subset of the larger project) on May 20, 2008, and filed a Notice of Determination (NOD) with the Humboldt County Clerk on May 21, 2008 and the Governor's Office of Planning and Research (OPR) on May 27, 2008, for the EIR;
8. The City prepared an addendum to the EIR (Addendum No. 1) to analyze an interim project, including addressing improvements to the headworks, temporarily installing a chlorine generator (disinfection system) and sludge press;
9. The City certified the Addendum No. 1 and approved the interim project on June 2, 2009, and filed an NOD with the Humboldt County Clerk on June 4, 2009 and OPR on June 8, 2009, for the Addendum No. 1;

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10. The City prepared a second addendum to the EIR (Addendum No. 2) to address the Project, revisions to Alternative 1 in the EIR and applicable mitigation measures, the addition of two potential transmission pipeline route options (Routes 1 and 2), and a change from Type I irrigation to Type II flood irrigation (this eliminated the need for a storage pond);
11. The City certified the Addendum No. 2, adopted a revised MMRP, and approved the Project on October 5, 2010, and filed an NOD with the Humboldt County Clerk on October 7, 2010, and OPR on November 3, 2010, for the Addendum No. 2;
12. The City incorporated mitigation measures or alternative design into the Project that will avoid or substantially reduce potentially significant adverse environmental impacts;
13. The EIR and the supporting 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. A special condition will be included in the City's CWSRF financing agreement to ensure compliance with the Migratory Bird Treaty Act (MBTA);
14. Several bird species listed under the federal Migratory Bird Treaty Act (MBTA) have the potential to occur in the riparian woodland forest (adjacent to the irrigation site). There will be no impacts to the riparian woodland habitat as the Project will occur away from the riparian habitat, but the City will implement mitigation measures to ensure less than significant impacts will occur to migratory bird species; and
15. The City is currently defending two lawsuits related to the construction bidding process.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$13,424,895 for the City's Project with an extended term of 30 years and \$6 million in Principal Forgiveness. The first repayment shall be due one year after completion of construction.
2. Directs Division staff to allocate \$13,424,895 consistent with the construction schedule and availability of funds.
3. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by June 29, 2012. 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.
4. Conditions this approval to require the City to implement mitigation measures 6-5 as identified in the EIR, the Addendum No. 2 and the MMRPs to reduce potential impacts to migratory bird species in accordance with the MBTA.
5. Conditions this approval, to require the following:
 - a. The City shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times total annual debt service;

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- b. The City shall establish a Reserve Fund equal to one year's debt service from available cash prior to the construction completion date;
 - c. The City must implement all approved rate increases;
 - d. The City may not incur future senior debt. Future debt may be on parity with CWSRF debt if Policy conditions are met (CWSRF Policy Section X.G1); and
 - e. The financing agreement shall be limited to a maximum of \$13,424,895, with an interest rate of one-half the most recent general obligation bond rate as of today's date and a 30-year repayment term, and with the expectation that \$6 million in principal will be forgiven upon satisfaction of the terms and conditions of the financing agreement. If information relating to the credit review changes a supplemental credit review may be required.
6. Conditions this approval to require the City to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the City's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any new settlement agreements or revised court rulings within 15 days of such event.
 7. Directs Division staff to incorporate bid costs into the financing agreement and disburse funds for construction only after the City provides the following:
 - a. A legal opinion certifying that the City has sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, repair, monitor, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer; and
 - b. A legal opinion certifying that (1) all pending bid and/or contract disputes have been resolved; and (2) there is no pending or anticipated litigation or dispute that will detrimentally affect (a) the City's payment source, (b) the ability of the City to agree to pay the CWSRF financing, or (c) the ability of the City to manage and implement the Project.
 8. Conditions this approval to require the City to sign an amended financing agreement that incorporates bid costs on or before January 10, 2013. Division staff may approve up to a 120-day extension for good cause.

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 January 10, 2012.

Jeanine Townsend
Clerk to the Board