

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION –DIVISION OF FINANCIAL ASSISTANCE
SEPTEMBER 19, 2012**

ITEM 6

SUBJECT

CONSIDERATION OF A RESOLUTION DIRECTING THE STATE WATER RESOURCES CONTROL BOARD'S EXECUTIVE DIRECTOR TO APPLY TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA) TO OFFER EXTENDED TERM FINANCING (ETF) FOR DISTRESSED MUNICIPALITIES AS PART OF THE CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM

DISCUSSION

The State Water Resources Control Board (State Water Board) provides long-term, low-cost financing through the CWSRF program to municipalities for the construction of wastewater treatment plants. Both state and federal law govern the CWSRF program. Financing terms under the CWSRF program are generally capped at 20 years from completion of construction pursuant to provisions of federal law. The State Water Board has requested and U.S. EPA has approved longer terms for two targeted categories: small, disadvantaged communities; and regionalization projects. Each category is based on specific definitions.

For the purposes of ETF, "small, disadvantaged community" means a community with a population of 20,000 persons or less and a Median Household Income (MHI) equal to or less than 80 percent of the statewide MHI. Communities with a population of 20,000 persons or less that pay at least four percent of their MHI towards wastewater infrastructure may also be considered disadvantaged, but these communities must receive approval for ETF on a case-by-case basis from the State Water Board if their MHI is more than 80 percent of the statewide MHI. For the purpose of ETF, "regionalization" means merging existing sewage collection and/or wastewater treatment systems to provide customers with consolidated collection and treatment to reduce costs, increase reliability, or decommission facilities.

The CWSRF has successfully financed hundreds of wastewater projects with municipalities throughout the state for the benefit of the state's water quality. In recent years, the State Water Board has undertaken special efforts to make financing available to communities that could not otherwise afford to make water quality improvements. The State Water Board has made available limited funds for principal forgiveness, and has provided ETF as appropriate.

So far in 2012, several California municipalities have sought protection under Chapter 9 of the federal bankruptcy laws. Restructuring a CWSRF financing obligation can prevent or reduce negative effects on the CWSRF program and the affected communities themselves. Restructuring can reduce the likelihood of defaults in the CWSRF program. Restructuring a CWSRF loan for a community in financial distress or financial emergency can also allow the community to continue to operate and maintain its wastewater infrastructure while working through its bankruptcy plan. Therefore, restructuring existing agreements with such communities by offering ETF would seem to be in the best interest of both the CWSRF and the affected communities.

Communities currently in financial distress or facing a financial emergency may not fit within the current definitions for ETF. The Division of Financial Assistance (Division), therefore, requests authorization from the State Water Board to seek U.S. EPA approval for the CWSRF to provide ETF to communities in financial distress or financial emergency. Financial distress or financial emergency means that a community has filed for bankruptcy protection in federal court or has taken preliminary action for bankruptcy protection pursuant to section 53760 of the Government Code. Preliminary action prior to filing for bankruptcy protection means participation in the neutral evaluation process or declaration of fiscal emergency through local resolution, both as specified in Government Code section 53760.

POLICY ISSUE

Should the State Water Board direct the Executive Director to submit an application to U.S. EPA requesting approval of ETF for communities in financial distress or facing a financial emergency?

FISCAL IMPACT

Extending the repayment terms of communities in financial distress or facing a financial emergency will delay payment of principal and interest on those agreements, and will marginally reduce future growth of the CWSRF. However, providing extended repayment terms for communities in financial distress or facing a financial emergency will reduce the likelihood of defaults on CWSRF financing agreement by those recipients.

Restructuring the terms of existing agreements for communities in financial distress or financial emergency should result in lower administrative costs than participating in bankruptcy proceedings.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

The State Water Board should direct the Executive Director to submit an application to U.S. EPA requesting approval of ETF for communities in financial distress or financial emergency.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2012-

DIRECTING THE STATE WATER RESOURCES CONTROL BOARD'S EXECUTIVE DIRECTOR TO APPLY TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (U.S. EPA) TO OFFER EXTENDED TERM FINANCING (ETF) FOR DISTRESSED MUNICIPALITIES AS PART OF THE CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM

WHEREAS:

1. The CWSRF Program is a joint federal/state funded program, providing low-cost financing for projects intended to improve the quality of the state's waters;
2. While CWSRF financing terms are generally capped at 20 years under state and federal law, U. S. EPA may authorize a state to offer ETF, with financing terms capped at 30 years;
3. In 2008, U.S. EPA approved the State Water Board's ETF program for small, disadvantaged communities, and in 2012 U.S. EPA approved the State Water Board's ETF program for regionalization projects;
4. The State Water Board most recently amended its *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), which Policy guides the CWSRF Program, in March 2009;
5. The State Water Board recognizes the effect that the current state of the economy has on communities obligated to repay CWSRF financing agreements;
6. ETF help address the financial conditions in California communities and reduce the possibility of defaults on outstanding CWSRF agreements;
7. The eight approval criteria outlined by U.S. EPA for ETF will be addressed in the application to U.S. EPA; and
8. Staff has determined that the CWSRF can maintain or exceed its average historic assistance level while providing ETF to communities in financial distress or facing a financial emergency.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board directs the Executive Director, or designee, to apply to U.S. EPA to offer ETF for communities with outstanding CWSRF agreements that are in financial distress or facing a financial emergency;
2. The State Water Board approves the amendments to the Policy, identified in the [Attachment](#), contingent upon approval of this application by U.S. EPA; and

D R A F T

3. The State Water Board directs staff, in the CWSRF Annual Report, to evaluate the effect of ETF on the revolving level of the CWSRF.

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 September 19, 2012.

Jeanine Townsend
Clerk to the Board