



COUNTY SANITATION DISTRICTS OF LOS ANGELES COUNTY

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GRACE ROBINSON HYDE
Chief Engineer and General Manager

October 19, 2018



Delivered Via Electronic Mail

Members of the Board
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Via email: commentletters@waterboards.ca.gov

Dear Chair Marcus and Members of the Board:

Comment Letter – November 27, 2018 Board Meeting CWSRF Policy Amendment

The Sanitation Districts of Los Angeles County provide wastewater conveyance, treatment, disposal, and water reuse service to over 5 million people in 78 cities and numerous unincorporated areas within Los Angeles County. We have a long history of partnering with the State Water Resources Control Board (SWRCB) through the Clean Water State Revolving Fund (CWSRF) loan program to advance our mutual goals. We appreciate the efforts the staff has made to continually make improvements to the program and for the opportunity to provide the SWRCB with comments on the proposed *Amendment to the Policy for Implementing the CWSRF*.

In general, we believe the proposed Policy represents an equitable approach to addressing current constraints on the CWSRF. Our specific major comments are focused in three main areas: the scoring system, carry-over of allocated funds, and requirements outside of the jurisdictional control of applicants. Minor comments and clarifications have been compiled into a table format attached to this letter.

The Scoring System

Primary Score

In the Primary Scoring criteria, “Corrective” projects receive a higher score than “Preventive” projects. While we recognize the importance of correcting on-going problems, we are concerned that this might have the unintended consequence of encouraging agencies to be “bad actors” because they are given a lower score for being proactive and addressing issues before they become problems. We request that State Board staff continue to work with stakeholders to address this concern in future revisions.

Development of the Annual Fundable List

Under the proposed Policy, the Division would select a cutoff score for fundable projects. If the cutoff score didn’t generate enough projects, the next lower score would become the cutoff. If that next lower score generated too many projects, a supplemental score (Community Economic Status) would be included; in effect, a tie breaker. As proposed, the supplemental score would be added to all projects above the cutoff score, not just those with the lowest score (i.e., those right at the new cutoff line).

This seems counterintuitive. If the initial cutoff score had generated a sufficient number of projects, there would have been no need to go to the tie breaker and the projects with a lower initial score would never have been considered. Now, with the supplemental score, they could actually end up bumping a project with a higher initial score. If the Community Economic Status is just to be considered as a tie breaker, it should only be applied to the projects at the cutoff score and then used to rank them within those with a similar initial score. Conversely, if the SWRCB feels that the Community Economic Status is more than just a tie breaker and is important for the rankings, it should be included as part of the initial scoring.

Additionally, it is not clear how “large disadvantaged communities” will be assessed for this criterion. Our understanding based on discussions with SWRCB staff, is that a “large disadvantaged community” could be a sub-set of the agency’s jurisdictional boundaries and only a portion of the project would need to service this community in order to qualify for each scoring criteria. Formally stating this in the Policy will ensure that this item is clear to applicants in the future.

Readiness Score

The “Readiness Score” requires at least 49% complete to get a score of 1 and 89% to get a score of 2. Anything less than 49% receives a score of 0. Providing this scoring seems to indicate that the SWRCB wants applications to be submitted when design is nearly complete. However, in Section IX.A.1, it states “Applicants should submit the complete application for review in advance of the ten percent (10%) design level effort.” Agencies that target a high readiness score are more likely to receive funding, but may run into significant issues as the review process may not be complete by the time construction is ready to begin. This leaves applicants with no choice but to proceed with construction before the CWSRF financing agreement has been executed.

We feel that the “Readiness Score” is appropriate and should be encouraged and that the review process can be improved to move projects more expeditiously through the process. As a result, we recommend that SWRCB staff conduct the necessary environmental review (including federal cross-cutters) concurrently with the CEQA review process rather than waiting until later in the application process and/or when the project appears on the Fundable List. We appreciate staff’s concern in not wanting to review every project that goes through the State Clearinghouse. As such, we recommend that agencies notify the Division’s Environmental Review Group of projects going through the State Clearinghouse for which the agency reasonably expects to receive a score that would put it above the funding cutoff score so that the environmental review can be done concurrently.

Cash Flow Prioritization

We also recommend that projects that agree to accept shorter term financing (e.g. 20-year versus 30-year) receive additive scoring points. As we noted in our IUP comments, 20-year financing will replenish the revolving fund faster and would result in more funding being made available through the SRF program. An applicant willing to take on a shorter repayment should be rewarded with a higher priority score, moving it up the prioritization list. As such, these points should be included as an additive amount.

Carry over of Allocated Funds

Section IV.B.4.b states that projects on the Fundable List that are not financed in that year will carry over to the next. However, SWRCB staff has indicated that monies set aside for these projects in the IUP will not carry over and it will count against the following year’s available funds. As a result, projects that don’t proceed quickly may tie up money for more than one year, limiting the amount of projects that

can be built. We recommend projects and their funding be carried over each year so that future projects aren't limited by delays in executing agreements for Fundable Projects in past years.

Agency Jurisdictional Control

Section IX.B.2.d.ii states that agencies can only receive a financing agreement if water suppliers in the agency's service area comply with Division 6 of the Water Code. There are nearly 100 water suppliers in our service area over which we have no authority. While we believe most of those water suppliers are compliant, it would be unfair to punish our entire service area because of one recalcitrant water supplier. We recommend that exemptions be made where water suppliers are not under the jurisdictional control of applicants.

Thank you for the opportunity to comment on the proposed Policy. We look forward to continuing to work with the SWRCB on developing policy consistent with the stated goals and objectives. If you have any questions, please contact Andrew Hall at (562) 908-4288, extension 2750 or via email at ahall@lacs.org.

Very truly yours,



David B. Bruns
Department Head
Financial Management Department

DBB:AH:gc

Attachment

Attachment 1: Minor Issues/Concerns

The items below are minor comments/concerns of the Sanitation Districts. Page numbers refer to the redlined version of the proposed Policy.

Item	Issue/Recommendation
Page 3, definition of “Existing Debt”	This definition makes reference to the term “System revenues” without defining that term anywhere in the Policy. System revenues, if undefined, could have a different meaning to different agencies. In particular, in this context, it could mean only the revenues pledged to repayment of this specific obligation. System Revenues should be defined.
Page 4, definition of “Regional Water Board”	This definition refers to an “appropriate” Regional Board. The term “appropriate” here is rather ambiguous. Defining it as the Regional Board in which the project is located or as the Regional Board issuing permits would provide more clarity.
Page 5, definition of “SERP”	This definition refers to “EPA Region 9”. However, the Roman numeral “IX” is used in other locations of the Policy.
Page 9, Section IV.B.2.b.1	The word “may” should be changed to “will” since zero is still a score. This would make b.i and b.iv consistent.
Page 9, Table 2	We believe the “climate change” secondary characteristic should be modified to include projects that were identified as a result of a permit requirement originating from the State Water Board’s Climate Change Resolution.
Page 11, Section IV.B.1.b	It appears that the qualifier “small” for SDAC and DAC was left out of the exception list for priority scoring.
Page 11, Section IV.B.3.b.iv	The terms “complementary financing sources” and “complementary funding sources”, which appear to be used synonymously in a few locations throughout the Policy, are vague and should be defined.
Page 16, Section IV.C.2	This section only references Small DACs. Unless the policy is amended for Small DACs to include Small SDACs, this should say that the SCG provides funding for Small DACs and Small SDACs.
Page 20, Section VIII.A.1.b.iv.(A)	What is the purpose of identifying restricted funds? If they are restricted, they can’t be pledged so they become irrelevant.
Page 22, Section VIII.A.1.c.i.(A)	It is unclear what is meant by “parity annual debt service” in this context. The new obligation can be either senior or subordinate depending on what restrictions and other covenants may already be in place. The coverage requirement should be the greater of (1.2 Senior + 1.0 Subordinate) or (1.1 Total). This comment also applies to Section IX.B.4.c.ii.(A).
Page 17, Section VIII.A.1.e.i	This section states that a proposed loan security/PRF is not required if the applicant is a small DAC or small SDAC applying and eligible for 100% grant or principal forgiveness. Why specify that the applicant must be small DAC or small SDAC? It seems that an applicant applying and eligible for 100% grant or principal forgiveness should not need a proposed loan security/PRF regardless of whether or not they are a small DAC or SDAC.
Page 26, Section VIII.D.3	This section states that the applicant will generally be expected to submit an opinion from its general counsel. The process or criteria for determining if the opinion of counsel will be waived should be included in the Policy.

Attachment 1: Minor Issues/Concerns

Item	Issue/Recommendation
Page 34, Section IX.B.4.c.i	This section should be expanded to include the criteria and process for obtaining a waiver of the reserve requirement since most bond issuances no longer require a reserve fund.
Page 35, Section IX.B.4.d.i	This section states the State Water Board normally expects CWSRF's debt obligation lien status to be on par with senior debt. Many agencies may already have subordinate debt that restricts their ability to issue senior debt. This is particularly true if an agency already has an existing SRF loan at the subordinate level since the CWSRF loan requirements specifically forbid any senior debt. We suggest adding a statement that the actual CWSRF debt obligation lien status will be based on agencies existing debt obligation requirements.
Page 35, Section IX.B.4.d.ii.(A)	This section allows for additional obligations to be senior to CWSRF obligations if the CWSRF agreement provides for 100 percent forgiveness. This allowance seems unnecessary; if the CWSRF agreement provides for 100 percent forgiveness there would be no CWSRF obligation for additional obligations to be senior to.
Page 35, Section IX.B.4.d.ii.(B)	This section allows for additional obligations to be senior to CWSRF obligations if, in part, the senior obligation(s) predate the CWSRF obligation. This allowance seems unnecessary, because if the senior obligation predates the SRF loan then it wouldn't be considered an additional obligation.
Page 36, Section IX.B.4.e.iii	If real property is pledged as the security for a loan, it seems that the State should place a lien against the property in order to secure the loan and prevent the borrower from selling off the security.
Page 39, Section IX.C.1	There are two sections labeled IX.C.1. Eligible Project Costs and Ineligible Costs.
Page 39, Section IX.C.1.b	If land is involved, the State "should" be listed as a first lien holder, not "may".
Page 41, Section IX.C.1.r.vi	We suggest that "on publicly owned" is removed from the definition and replaced with "eligible". A retrofit project that includes expansion of pipelines may include multiple sites including both public and private that should be retrofitted.
Page 54, Section XIV.F.1.b	The term Rate Stabilization Fund needs to be defined. Also, Rate Stabilization Fund transfers should only viewed as supplemental revenue if they have previously been expensed.
Appendix N, Definitions: (D)	Why is this limited to a 5-year window? Many bonds can be back-loaded to ease the financial burden in the early years. Looking only at a 5-year window may not present the whole picture of an agency's financial condition.
Appendix N, Definitions: (E)	This definition may be in conflict with some agencies' existing bond instruments. There may need to be flexibility in the definition to allow a subset of Net Revenues to be pledged to secure the debt obligations.
Appendix N, Section A.3.a.	Debt service is the amount due in any given year, not just at maturity or at mandatory redemption. This is particularly true for SRF loans in which case the annual payment (i.e. debt service) is an amortized amount.
Appendix N, Section B.1.b.	This section requires two ratings agencies to issue bond ratings every 36 months. Since ratings agencies don't always issue ratings in this frequency this will add considerable expense. We question whether the value from this additional requirement is worth the costs.
Appendix N, Section D.1.a.	Many bond instruments allow a 24-month look back as opposed to 18-months. We recommend a 24-month look back.