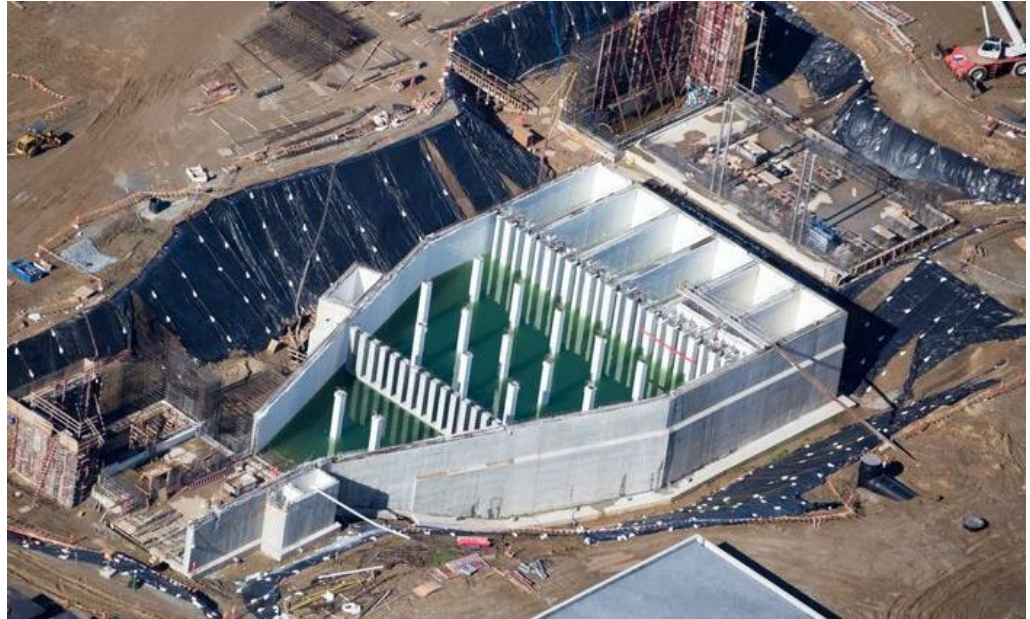


**STATE
WATER
RESOURCES
CONTROL
BOARD**



**CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY**



Policy for Implementing the Clean Water State Revolving Fund



Amended
XXXXX, 2024

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

Amended XXXX, 2024

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CLEAN WATER STATE REVOLVING FUND
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https://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/cwsrf_policy.shtml

LIST OF ACRONYMS AND ABBREVIATIONS

AIS	American Iron and Steel
CEQA	California Environmental Quality Act
CWA	Clean Water Act
CWSRF	Clean Water State Revolving Fund
DAC	Disadvantaged Community
DBE	Disadvantaged Business Enterprise
DWR	Department of Water Resources
FSP	Fiscal Sustainability Plan
GAAP	Generally Accepted Accounting Principles
GASB	Governmental Accounting Standards Board
IUP	Intended Use Plan
MHI	Median Household Income
POTW	Publicly Owned Treatment Works
PRF	Pledged Revenues and Funds
SCG	Small Community Grant
SDAC	Severely Disadvantaged Community
SERP	State Environmental Review Process
U.S. EPA	United States Environmental Protection Agency
WRFP	Water Recycling Funding Program

I. **INTRODUCTION**

This Policy was written to implement the federal Clean Water Act's (CWA) Clean Water State Revolving Fund (CWSRF) Program in California. The CWA provides for the creation of a CWSRF Program capitalized by federal and state funds. The CWA authorizes financial assistance through loans and other financing mechanisms for a wide variety of pollution control efforts designed to meet the goals of the CWA. The CWSRF is intended to provide financial assistance in perpetuity using state and federal funds.

The California statutory basis for the CWSRF is established in sections 13475 – 13485 of the Water Code. The federal statutory basis for the CWSRF is established in title 33, sections 1381 - 1388 of the United States Code. In addition, the 2021 Infrastructure Investment and Jobs Act, also referred to as the Bipartisan Infrastructure Law (BIL) appropriated funds over five years to the CWSRF. These funds are subject to modified requirements, as provided in the BIL. Notwithstanding any provision of this Policy, the State Water Board will implement the CWSRF program consistent with federal and state law and policy.

The *Policy for Implementing the Clean Water State Revolving Fund* addresses all project types eligible for CWSRF assistance. It is organized in order of project development, and it sets forth the requirements to obtain CWSRF financing.

This Policy governs the administration of the CWSRF. The Policy may also be used to administer funds other than CWSRF funds to the extent provided in the annual CWSRF Intended Use Plans (IUP) or as otherwise specified by the State Water Board. The annual Intended Use Plans or other documents adopted by the State Water Board may specify when federal requirements apply, consistent with federal law, and may otherwise modify application of the provisions of this Policy. The Deputy Director may determine not to apply certain CWSRF Policy requirements or federal requirements to projects that only receive State Grant funding.

The provisions of this amended Policy are effective upon adoption, unless otherwise required by federal or state statute, guidance, regulation, or agreement. The scoring criteria in section IV.B will be utilized for applications submitted after January 1, 2025, meaning that the State Fiscal Year 2026-27 IUP will be the first IUP to utilize these scoring criteria.

II. **PURPOSE AND OBJECTIVE**

Under federal and state law the primary purpose of the CWSRF Program is to provide financing for eligible projects to restore and maintain water quality in the state. This Policy is also designed to support multiple objectives where economically and technically feasible. These additional objectives must be cost-effective and complement both the federal and state criteria and the policy goals of the State Water Board.

The State Water Board also seeks to reduce the effects of climate change and to promote sustainable water resources for future generations. In 2017 the State Water Board adopted Resolution No. 2017-0012 specifying a range of actions the State

Water Board's divisions and offices will take to implement its climate change program. This Policy is designed to support those efforts.

Additionally, Section 106.3 of the Water Code provides that it is the policy of the state that every human being has the right to safe, clean, affordable and accessible water adequate for human consumption, cooking, and sanitary purposes. This section requires the State Water Board to consider this state policy when adopting policies and grant criteria. The State Water Board has considered the provisions of Section 106.3 of the Water Code in establishing this Policy.

The State Water Board adopted a Racial Equity Resolution on November 16, 2021. Resolution No. 2021-0050 directed staff to develop a plan to advance racial equity within the Water Boards. The State Water Board's Racial Equity Action Plan includes goals, actions, and metrics to create a future where we equitably preserve, enhance, and restore California's water resources and drinking water for all Californians, regardless of race, and where Water Board employees reflect the racial and ethnic diversity of California. It requires the Division to assess race/ethnicity data and other relevant demographic data associated with the communities that benefit from funding administered by the Division and include this information in its funding reports and plans.

III. DEFINITIONS

The following words used in this CWSRF Policy shall have the meaning ascribed to them:

"Agricultural Water Supplier" means a water supplier, pursuant to Section 10608.12 of the Water Code.

"Allowance" or "soft costs" means an amount of money for eligible planning, design, value engineering, construction management, and administration costs of the project.

"Applicant" means the legal entity with the authority to enter into agreements and incur debt related to the Project or applications for planning/design financing. Eligible applicants for particular project types vary under applicable law, and are set forth in the Intended Use Plan (IUP).

"Authorized Representative" means the duly appointed representative of the Applicant/Recipient that has the authority to represent the Applicant/Recipient, sign documents pertaining to the financing application, execute the Financing Agreement on behalf of the Applicant/Recipient, and submit reimbursement requests.

"Bridge Financing" means interim financing to cover Eligible Project Costs until the CWSRF financing for the project is received from the State Water Board.

"Capitalization Grant" means federal CWSRF funds granted to the State Water Board by the United States Environmental Protection Agency (U.S. EPA) in a particular year pursuant to certain terms and conditions.

“CEQA” means the California Environmental Quality Act (commencing at Section 21000 of the Public Resources Code and including the regulations and guidelines adopted by the California Natural Resources Agency to implement the Act).

“Clean Water Act” or “CWA” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), including any amendments thereto.

“Completion of Construction” means the date that the work of building and erection of the project is substantially complete.

“Completion of Planning/Design” means that the Division has accepted the deliverables identified in the planning/design financing agreement.

“Change Order” means change in the scope of work of a planning and design services contract, or a construction contract, that results in an unforeseen cost. Change Orders are subject to approval by the Division.

“Construction/Implementation Financing” means financing to cover some or all of the cost of the construction of an infrastructure project, including but not limited to planning, preliminary engineering, design, treatment systems, interconnections, consolidations, purchase of land or equipment, and extending service to residents currently served by decentralized systems.

“Contingency” means the amount budgeted for unforeseen Eligible Project Costs in a Financing Agreement. Contingencies are subject to approval by the Division.

“Deputy Director” means the Deputy Director of the State Water Board’s Division of Financial Assistance.

“Division” means the Division of Financial Assistance within the State Water Board.

“Eligible Project Cost” means that portion of the total cost of a Financing Agreement that is eligible for financial assistance under this Policy pursuant to federal and state laws, rules, regulations, policies, and guidelines.

“Eligible Construction Start Date” means the date established by the Division upon approval of the financing application. Construction costs incurred after this date are eligible for financing. For construction financing the Eligible Construction Start Date may not be earlier than a fundable project’s notice to proceed date or the start of project implementation.

“Environmental Document” means a Categorical Exemption, Initial Study, and Negative Declaration, Mitigated Negative Declaration, Environmental Impact Report, Addendum, Supplemental or a Subsequent document prepared in accordance with CEQA and associated supporting documents showing compliance with applicable federal environmental laws, consistent with the State Environmental Review Process (SERP).

“Estuary project” means a project that implements a Comprehensive Conservation and Management Plan for Morro Bay, the San Francisco Bay, or Santa Monica Bay, in accordance with Section 320 of the federal CWA.

“Executive Director” means the Executive Director of the State Water Board.

“Existing debt” means the Applicant’s existing material debt.

“Financial distress” or “financial emergency” means that a recipient has filed for bankruptcy protection in federal court or has taken either of the preliminary actions for bankruptcy protection pursuant to Section 53760 of the Government Code.

“Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the Recipient, setting forth the terms, provisions, and conditions governing the financing and repayment, if any. This document may be a Loan, Non-Repayable Financing, or another financing instrument.

“Fundable List” means a list of projects in the IUP that are expected to receive a Financing Agreement in a particular state fiscal year. The Fundable List is prepared pursuant to Section 603(g) of the CWA.

“Infiltration” means groundwater entering a sewer system due to defective pipes, pipe joints, connections, manhole walls, or similar defects. Infiltration is distinct from inflow.

“Inflow” means the water entering a sewer system from roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, drainage, or similar sources. Inflow is distinct from infiltration.

“Intended Use Plan” or “IUP” means the annual document that the State Water Board submits to U.S. EPA after public review and comment that contains the business plan for the CWSRF, identifies the projects eligible for funding during the year, and the terms and conditions applicable to funding.

“Loan” means and includes any repayable financing instrument, including a loan, bond, installment sale agreement, note, or other evidence of indebtedness.

“Nonpoint Source project” or “NPS project” means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture, consistent with the NPS Implementation Plan.

“Non-Repayable Financing” means and includes any form of non-repayable financing, whether in the form of grant, Principal Forgiveness, or other form of financing instrument.

“Operating Agreement” means the Operating Agreement between the California State Water Resources Control Board and the United States Environmental Protection Agency Region IX for Activities and Functions in Managing the State Water Pollution Control Revolving Fund Program, dated November 2012 and any amendments thereto. (See *Appendix B*).

“Planning/Design Financing” means financing to cover some or all of the cost of preliminary activities necessary to construct or implement a project including, but not

limited to, legal costs, studies, planning, preliminary engineering, and design for a project.

“Pledged Revenue and Funds” or “PRF” means one or more existing dedicated sources of revenue and/or funds pledged by the Applicant for the repayment of the loan.

“Principal Forgiveness” means a loan, or a portion of a loan, from the State Water Board that is anticipated to be forgiven with no principal and interest due at completion of the project.

“Project” means any activity described in the application or the approved Financing Agreement, which can include construction, implementation, and when applicable, planning activities, and for which financial assistance under this Policy is sought or provided. These activities can mean distinguishable segments of a larger project, so long as they can be constructed or implemented separately.

“Recycled Water” is defined in Section 13050(n) of the Water Code.

“Recipient” means an applicant with an executed Financing Agreement signed by all parties.

“Refinancing” means the use of CWSRF monies to pay off debt related to an otherwise eligible CWSRF project and provide CWSRF financing in its place.

“Regional Water Board” means the appropriate California Regional Water Quality Control Board.

“State Grant” means a grant administered under the IUP funded by state general obligation bonds or state general fund appropriations that is not used as state match for a CWSRF capitalization grant.

“Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration or Inflow.

“SERP” means State Environmental Review Process approved by U.S. EPA Region 9.

“Small Community Grant” or “SCG” means a grant authorized by Section 13477.6 of the Water Code.

“Small Disadvantaged Community” or “Small DAC” means a community with a population of less than 20,000, and either or both of the following conditions:

- an MHI of less than eighty percent (80%) of the statewide MHI;
- a sewer rate of more than four percent (4%) of the community’s MHI.

“Small Severely Disadvantaged Community” or “Small SDAC” means a community with both a population of less than 20,000 and an MHI of less than sixty percent (60%) of the statewide MHI.

“State” means the State of California.

“State Water Board” means the State Water Resources Control Board.

“Storm water project” means any program, device, method, or system used to prevent, abate, reduce, transport, separate, store, treat, recycle, or dispose of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or groundwaters of the state and the reuse or disposal of storm water determined acceptable for reuse or disposal.

“Treatment facilities” or “treatment works” means “treatment works” as defined in Section 1292 of Title 33 of the United States Code.

“Urban Water Supplier” means a supplier, pursuant to Section 10617 of the Water Code.

“Useful Life” means the estimated period over which the funded facility will serve its intended purpose in a cost-effective manner from the estimated initiation of operation date.

IV. PROGRAM MANAGEMENT

A. Intended Use Plan and Capitalization Grant Applications

1. Annually the Division will prepare an IUP for the State Water Board’s consideration and submittal to the U.S. EPA. The State Water Board may establish various requirements, conditions, and incentives in the IUP, and may reserve funds for selected classes or types of Projects or applications for planning/design financing. The IUP will provide information necessary to satisfy U.S. EPA’s requirements including, but not limited to, the availability of and applicable limitations on Non-Repayable Financing, equivalency requirements, the application of financing service charges, details regarding technical assistance funds, and a Fundable List of Projects or applications for planning/design financing eligible to receive funding based on their priority and the availability of funds for the year.
2. Following public review, amendments to an IUP must be made by the State Water Board, except that the Deputy Director of the Division may add Projects or applications for planning/design financing to the Fundable Lists in accordance with procedures set forth herein and in the applicable IUP. The Deputy Director of the Division may make non-substantive corrections to an IUP without conducting public review.
3. The Executive Director may apply for and accept Capitalization Grants and approve amendments to the Capitalization Grants.
4. The Executive Director is authorized to approve amendments to the Operating Agreement.

B. Comprehensive List

1. Purpose of the Comprehensive List

The purpose of the Comprehensive List is to catalog and identify projects potentially eligible for placement on the Fundable List.

Placement of a project on the Comprehensive List does not constitute a commitment to provide financing. However, projects included on the Comprehensive List may be considered for placement on the Fundable List based upon the criteria and process included in this Policy.

2. Updating the Comprehensive List

The Division may update the Comprehensive List. The Comprehensive List will be posted promptly by the Division on the State Water Board's website after it has been updated.

3. Project Removal from the Comprehensive List

- a. The Division will monitor the progress of project applications on the Comprehensive List to ensure that Applicants are proceeding expeditiously to a complete application.
- b. The Deputy Director of the Division will remove any Project or application for planning/design financing from the Comprehensive List when:
 - i. The Project or application for planning/design financing has been on the Comprehensive List for at least four (4) consecutive quarters, and the Applicant has been non-responsive or has not requested that the Project or application for planning/design financing remain on the Comprehensive List;
 - ii. The State Water Board so instructs;
 - iii. The Project or application for planning/design financing has received CWSRF financing or alternative financing;
 - iv. The Project or application for planning/design financing has repeatedly received a low priority score and is unlikely to be added to the Fundable List at a later date;
 - v. The Applicant ceases to exist or becomes ineligible or the Project or application for planning/design financing is determined to be ineligible for financing;
 - vi. The problem no longer exists or has been corrected; or
 - vii. The Applicant requests that the Project or application for planning/design financing be removed.

-
- c. Projects or applications for planning/design financing that are removed from the Comprehensive List may be added again in the future.

C. Fundable List & Scoring

The purpose of the Fundable List is to identify Projects and applications for planning/design financing the State Water Board intends to finance during the state fiscal year.

1. Fundable List in General

- a. A Project or application for planning/design financing must be on the Fundable List to receive financing, but placement on the Fundable List does not guarantee financing. A Financing Agreement will be executed only if the application meets all applicable eligibility requirements and sufficient funds are available.
- b. All Projects¹ and applications for planning/design financing submitted to the Division for CWSRF and its complementary funding sources will be evaluated for placement on the Fundable List. Annually all applications, except for small SDAC, small DAC, public health² projects, and any other projects identified in that year's IUP as not subject to scoring, will receive a priority score as described below in Section IV.C.2 of this Policy.
- c. Small SDAC, small DAC, and public health projects, and any other project or applicant types identified in that year's IUP as not subject to scoring are eligible to be added to the Fundable List once conditions in that year's IUP are met.
- d. Projects without a complete application will receive a priority score of 0. A complete financial assistance application means that all application packages (i.e., general, technical, financial, and environmental), with all applicable attachments, have been submitted to the Division.

2. Priority Score

For Projects and applications for planning/design financing subject to scoring, the priority score is the sum of three components: (a) the "project score," (b)

¹ Multiple application forms submitted for financially separate but technically interrelated and interdependent segments of a Project will be considered as one "Project" for scoring purposes. Projects that (a) have completed 25% of construction on or before December 31 or (b) started construction on or before December 31 and are anticipated to complete construction before the earlier of June 15th or the adoption of the IUP are not eligible for placement on the Fundable List.

²A project is a public health project when the County Board of Supervisors, City Council, or the County Health Officer has certified that a health problem exists and the State Water Board or a Regional Water Board has (a) adopted a discharge prohibition, (b) approved a moratorium, or (c) adopted a cease and desist order. Alternatively, a project may be a public health project when it is required to comply with a prohibition, posting, limitation, or warning that has been imposed by a responsible health authority and the State Water Board or a Regional Water Board has concurred with the health authority's determination and established a time schedule for correction or elimination of the problem. The applicant must demonstrate a direct connection between completion of the project and correction or elimination of the public health problem.

the “affordability score,” and (c) the “readiness score.” Pro-rated scores will not be awarded for any components of the priority score.

a. Project Score

- i. All applications subject to scoring will receive a project score. The project score is a single number selected from Table 1.
- ii. The project score is selected using the combination of purpose and resource or impact that results in the highest project score³. A description of each term in Table 1 is given below the table.
- iii. The maximum project score is ten (10).
- iv. Applications that do not meet any of the objectives in Table 1 will receive a project score of two (2).

Table 1 – Project Score

Resource or Impact	Purpose		
	Corrective	Preventive	Improvement
Drinking Water Source	10	9	6
Nutrient Removal	8		6
Water Recycling	-	-	8
Water Quality Control Plan or Permit, or Impaired Water Body	8	7	4

Project Score Descriptions

Purpose

Corrective: To qualify as a corrective project, the applicant must identify the specific plan, policy, or permit criteria that are being violated or exceeded, document the extent of the violations, document that the violations are the subject of enforcement actions, if applicable, by a Regional Water Board or the State Water Board, and demonstrate a direct connection between completion of the project and correction of the problem.

Preventive: To qualify as a preventive project, an applicant must demonstrate that not completing the project is likely to result in a plan, policy, or permit violation or exceedance in the near future. The applicant must identify the specific criteria that will potentially be violated or exceeded and demonstrate a direct connection between completion of the project and prevention of the violations.

Improvement: To qualify as an improvement project, an applicant must demonstrate that, while not necessary to meet current standards or prevent near-term violations, the project outcome will surpass current plan, policy, or permit requirements, meet anticipated future

³For example, a water recycling project that also corrects an impairment would be scored as a “corrective” project in that category, receiving a Primary Score of “8.”

requirements, or be done to improve the efficiency and reliability of meeting standards or reduce operating costs.

Resource or Impact

Drinking Water Source: The applicant must identify the drinking water source, the current or reasonably foreseeable users of that source, the drinking water standards that are in jeopardy, and demonstrate a direct connection between completion of the project and the elimination or reduction of the constituents that jeopardize the drinking water standards.

Nutrient Removal: Applicants must demonstrate a direct connection between completion of the project and a reduction in nutrient levels of the discharge effluent.

Water Recycling: Projects must meet the requirements of the *Water Recycling Funding Program Guidelines*.

Water Quality Control Plan or Permit: Applicants must identify the specific criteria in the Regional Water Board or State Water Board adopted plan or permit and demonstrate a direct connection between completion of the project and correction, prevention, or improvement of the conditions affecting the criteria.

Impaired Water Body: Applicants must identify the 303(d) listed water body, the specific impairment, and demonstrate a direct connection between completion of the project and correction, prevention, or improvement of the specific impairment.

b. Affordability Score

- i. All applications subject to scoring will receive an affordability score. The affordability score is a single number determined by Table 2.
- ii. The affordability score is potentially the sum of three numbers: community size and MHI, Sewer Rates/MHI Ratio, and whether the applicant has a rate assistance program.
- iii. The maximum affordability score is five (5).

Table 2 – Affordability Score

Secondary Characteristics			
	< 80% of State MHI	≥ 80% and < 100% of State MHI	≥ 100% and ≤150 % of State MHI
Small (≤ 20,000)	Not subject to scoring*	2	2**
Medium (> 20,000 and ≤ 100,000)	2	1	0
Large (>100,000)	1	0	0

<p>Note:</p> <ul style="list-style-type: none"> * The IUP may identify additional project categories as not subject to scoring. Small communities with < 80% of State MHI will automatically be placed on the Fundable List, if the Deputy Director deems the application to be complete and the applicant is seeking repayable loan. ** Communities with State MHI \geq 150% will receive a zero (0) in the table above. These communities can still receive points for Sewer Rates as a Percentage of MHI. 	
<p>Sewer Rates as a Percentage of MHI</p> <ul style="list-style-type: none"> • <1.5% • \geq1.5% 	<p>0 points 2 points</p>
<p>Offers Rate Assistance</p>	<p>1 point</p>

Affordability Score Descriptions

Small: Means a community with a population less than or equal to 20,000.

Medium: Means a community with population greater than 20,000 and less than or equal to 100,000.

Large: Means a community with a population greater than 100,000.

Disadvantaged Community: the entire service area of the funding applicant or a community therein, in which the Median Household Income (MHI) is less than 80 percent of the statewide annual MHI. Additional definitions used to determine a community MHI are included in Appendix R.

Non-Disadvantaged Community: Communities with MHI equal to or greater than 80% of the statewide MHI.

Sewer Rates/MHI: A year summation of a community’s adopted, residential sewer rate compared to the community’s MHI.

Offers Rate Assistance: The applicant or the entity that owns and maintains the project operates a program which offers financial assistance to help some rate payers within its service area pay residential sewer bills.

c. Readiness Score

- i. All projects subject to scoring will receive a readiness score.
- ii. The readiness score will be based on the status of the application and the project's plans and specifications as of December 31 of the year preceding the Fundable year.
- iii. The readiness score is the sum of the applicant’s readiness for an agreement and the applicant’s readiness to construct the project based on the factors identified in Table 3. If the threshold is not met for any factor, then the score for that factor is 0 (zero).
- iv. The maximum readiness score is three (3).

Table 3 – Readiness Score

Application or Design Status	Score
If status of Plans & Specifications \geq 90%, as verified by State Water Board Staff.	1
Consent to use of a funding agreement template: <ul style="list-style-type: none"> • As posted on the Division’s website • Applicant’s Recent Deal as basis for funding agreement template (Requires a satisfactory certification form submitted with application documents)	2 1

Readiness Score Descriptions

Plans & Specifications: Release of a request for proposal for design-build or similar construction procurement will be counted as 100% Plans & Specifications (P & S) for purposes of the readiness score. For construction projects that do not require construction P & S, acquisition of all agreements and approvals necessary to implement the scope of work will be counted as 100% P & S for purposes of the readiness score. Planning/design Projects are not eligible for this readiness point.

Consent to use of the funding agreement template as posted on the Division’s website: An Applicant may qualify for these readiness points if it certifies via a form provided by the Division that it is willing and able to agree to terms and conditions as they are posted on the Division’s website, plus any Subsequent Updates⁴, and agrees not to request any changes to the posted template.

Consent to use of Applicant’s Recent Deal as basis for funding agreement template: An Applicant may qualify for this readiness point if each of the following is true:

1. The Applicant has within 24 months of the scoring deadline executed, or given legal concurrence on, a repayable SRF agreement with the State Water Board, secured on the senior-most tier of the Applicant’s debt structure by the same pledged revenues to be pledged to repayment of the anticipated project financing (the “Recent Deal”).
2. The Applicant certifies that there have been no material negative changes to its financial condition since the date of the Recent Deal, including but not limited to material negative changes to its debt service coverage ratio, cash on hand, or future budget projections.

⁴ Notwithstanding the foregoing, the State Water Board is subject to compliance obligations associated with its funding and will therefore periodically update the standard terms used in its financing agreements (such updates are the “Subsequent Updates”). The Applicant’s certification that it agrees to use of either the posted template or a Recent Deal neither bars it from agreeing to Subsequent Updates nor precludes the Division from including Subsequent Updates in the Pending Deal or posting updates to the posted template. This certification in no way bars the Division from including new conditions, or modifying existing conditions, as it deems appropriate to address project-specific concerns.

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3. The Applicant certifies its ability and willingness, including any necessary consent of its general counsel and bond counsel, to use the Recent Deal, plus any Subsequent Updates to the Division's standard terms, as the template for the anticipated project financing agreement (the "Pending Deal"), and agrees not to request any changes from this template.

Once the Applicant has certified its consent to use either the posted agreement terms and conditions or the Recent Deal as the basis for the funding agreement template for the Pending Deal, the Division will deduct the readiness points awarded for this certification if the Applicant requests any change to the draft agreement developed by the Division on this basis for the Pending Deal or, in the case of use of a Recent Deal, if the Division determines that (a) the Applicant's financial condition has materially changed since the date of the Recent Deal or (b) considerations make the terms of the Recent Deal inappropriate for use as a template for the Pending Deal. Such deductions may result in the Applicant's project being removed from the Fundable List if they cause the project to no longer score high enough for placement on the Fundable List. The Division's determination to deduct readiness points pursuant to this paragraph is not subject to the appeal procedure in Section XVII. If an Applicant disputes the Division's determination, the Applicant may contact the Division with any concerns. However, the final determination of whether to award readiness points shall rest with the Division and is at its sole discretion.

- d. Priority Score Adjustments

The priority scores once established in an adopted IUP may only be adjusted by the adoption of a new IUP or amendment of an existing IUP.

3. Development of the IUP's Fundable List

- a. Based on funding applications received, the Division will select a cutoff score by comparing the demand for loan funds with the CWSRF's sustainable loan Funding Target in the IUP. The purpose of the cutoff score is to establish a Fundable List whose cumulative estimated repayable loan financing is within the sustainable Funding Target.
 - i. All Projects and applications for planning/design financing with a priority score higher than the cutoff score will be added to the Fundable List. Projects and applications for planning/design financing with a priority score equal to the cutoff score may be added to the Fundable List or not added to the Fundable List depending on the outcome of the process described in this subsection of the Policy. Projects and applications for planning/design financing below the cutoff score will not be added to the Fundable List.
 - ii. If a cutoff score results in a Fundable List with estimated total loan amounts equal to or greater than 90% of the Funding Target but less than or equal to 125% of the Funding Target, then that cutoff score will be used to determine the Projects and applications for planning/design financing that will be added to the Fundable List in the IUP.

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- iii. If a cutoff score results in a Fundable List with estimated total loan amounts less than 90% of the Funding Target, then a lower cutoff score will be selected.

If the next lower cutoff score results in a Fundable List greater than 125% of the Funding Target, then Projects and applications for planning/design financing whose priority score is equal to the proposed cutoff score will be evaluated separately for placement on the Fundable List using the affordability score determined by Table 2 above. Projects and applications for planning/design financing with the same score will be added to the Fundable List as follows:

- The Division will sort and rank all Projects and applications for planning/design financing with the proposed cutoff score from highest affordability score to lowest affordability score for potential placement on the Fundable List.
 - The Division will select the lowest affordability score such that the cumulative estimated loan financing of the Projects and applications for planning/design financing with that affordability score or higher, when added to the Fundable List, results in a Fundable List less than or equal to 125% of the Funding Target.
 - If the selection of an affordability score by the procedure above still results in a Fundable List greater than 125% of the Funding Target, then the Division may consider partially funding a subset of Projects and applications for planning/design financing. The Division will attempt to provide 100% of the requested financing to every Project and application for planning/design financing on the Fundable List to the greatest extent feasible, and will establish any funding limitations uniformly to those selected for partial funding. Projects and applications for planning/design financing approved for partial funding must demonstrate that the remaining funding is secured, or the Division must determine that it reasonably believes that the applicant is capable of obtaining the remaining funds necessary to successfully complete the Project or interrelated and interdependent phases of the Project or planning/design work. The funding limitations will not be adjusted during the Fundable year.
- b. The IUP may establish a maximum per project repayable loan amount resulting in partially funded projects in order to establish a lower cutoff score.
- c. Applications that are requesting only complementary financing sources, (i.e., no CWSRF Loan funds) and score below the cutoff score, may be included on the Fundable List based on the funding criteria for the complementary financing sources as described in that year's IUP.
- d. The Division may recommend a Fundable List greater than 125% of the Funding Target for good cause. The State Water Board reserves the right to

modify the recommended Fundable List to provide for effective and equitable use of CWSRF and other funds.

4. Funding of Projects

- a. All projects on the Fundable List are fundable provided they meet all eligibility requirements, and sufficient funds are available. The Division will monitor progress of all projects on the Fundable List to ensure that applicants are proceeding expeditiously to an executed agreement and completion of their planning/design, construction, or implementation.
 - i. The Division may establish a deadline in the IUP for scored applications on the Fundable List to submit all information requested by the Division staff necessary to execute an agreement and consent to the CWSRF's loan provisions through legal consultation, to remain on the Fundable List.
 - ii. The Division may also establish in the IUP other applicable deadlines necessary for applications to remain on the Fundable List.
- b. The Division will review all applications on the Fundable List with the objective of meeting performance metrics identified in the IUP, giving priority to Small SDAC, Small DAC, and public health applications followed by those communities with higher affordability scores. Applications on the Fundable List that are not financed by the end of the state fiscal year will generally be carried over to the next year's Fundable List if the applicant has met any secondary deadlines in the IUP.

5. Removals

- a. The Deputy Director of the Division will remove a Project or an application for planning/design financing from the Fundable List when:
 - i. It has been funded.
 - ii. The problem ceases to exist or the application is determined to be ineligible for funding;
 - iii. The applicant fails to meet applicable deadlines established in the IUP;
 - iv. The State Water Board instructs that it be removed;
 - v. The Division determines there is a conflict of interest between the applicant and a person or entity that would financially benefit from the funding (for example, a contractor or consultant); or
 - vi. The applicant requests that its application be removed.
- b. In addition, the Deputy Director of the Division may remove Project that does not serve a Small SDAC or a Small DAC Project or application for planning/design financing from the Fundable List if the applicant is non-

responsive and the Deputy Director has notified the applicant and given the applicant a reasonable opportunity to respond.

- c. Projects or applications for planning/design financing that were removed from the Fundable List for any reason may be placed on a future Fundable List if the Policy requirements for placement have been satisfied.

D. Interest Rate and Other Charges

1. Generally, the interest rate for CWSRF financing agreements is fifty percent (50%) of the most recent interest rate paid by the State on general obligation bonds issued by the State Treasurer's Office as of the date that the Division initiates preparation of the financing agreement document for routing and signoff or the State Water Board approves the financing, whichever is first, rounded up to the nearest ten basis points (0.1%).
2. The State Water Board may identify a lower rate for specific types or categories of eligible projects or recipients in the IUP.
3. The State Water Board will utilize the IUP to establish any authorized charges, including administrative service charge, Small Community Grant (SCG) funding charge, financing charges, and incentives. The administrative service charge provides funding for administration of the CWSRF Program, and the SCG funding charge provides a source of grant funding for wastewater projects that benefit small SDAC and small DAC communities. Where a financing agreement includes any such charge, the interest is correspondingly reduced so that the combined payment of principal, interest, and charge(s) is the same regardless of whether a charge is applied.

E. Annual Report to the U.S. EPA

The Division will prepare and send an Annual Report to the U.S. EPA that describes how the CWSRF Program met the goals and objectives identified in the year's IUP and appropriate additional periodic reporting requirements. The Division will promptly post the Annual Report on its internet website.

The State Water Board adopted the Racial Equity Resolution November 16, 2021. [Resolution No. 2021-0050](#) directed staff to develop a plan to advance racial equity within the Water Boards. The State Water Board's [Racial Equity Action Plan](#) includes goals, actions, and metrics to create a future where we equitably preserve, enhance, and restore California's water resources and drinking water for all Californians, regardless of race, and where Water Board employees reflect the racial and ethnic diversity of California.

Consistent with the Racial Equity Action Plan, the annual report should assess race/ethnicity data and other relevant demographic data, associated with the communities that benefit from the funding administered by the Division under this Policy. Data should be on a project specific basis where appropriate.

V. MATCH FINANCING

The State must generally contribute capital into the CWSRF equal to twenty percent (20%) of the federal capital contributions (i.e. Capitalization Grants), although requirements differ for BIL capitalization grants. The State Water Board may offer incentivized financing to applicants that contribute matching funds through their Financing Agreement.

A. Availability

The State Water Board will determine at least once each year whether to offer match financing. This determination will normally be made in the IUP.

B. Match Contribution

The Division will normally set the Applicant's match contribution for the Project at the proportional level to meet the state's required match. Match financing may be used regardless of whether federal capitalization grant monies are ultimately used for the remainder. Where the current interest rate environment renders this approach infeasible, the Division may set the Applicant's match contribution at an amount resulting in an imputed interest rate that is competitive with the current CWSRF interest rate for Construction/Implementation Financing.

C. Match Financing Resolution

An Applicant seeking match financing must submit a resolution passed by the Applicant's governing body that sets forth the Applicant's intent to provide the matching funds in the amount and at the times necessary to complete the Project or planning/design work. *Appendix C* contains a model resolution.

D. Match Financing Terms

The interest rate on match financing agreements will be zero percent (0%). The principal amount of the financing agreement will include both the amount received from the State Water Board and the matching funds contributed by the Recipient. The State Water Board may elect to charge a fee to cover the costs of obtaining federal funds. Planning/design financing agreements cannot utilize match financing. Match Financing may not be combined with other interest rate reduction incentives.

E. Match Disbursements

1. Eligible Project Costs

The Recipient must pay the proportionate match for each eligible project cost (normally 16.67 percent, to meet the state's required match), and may request the remainder of each eligible project cost (e.g. 83.33 percent of the financed amount) from the CWSRF.

2. Match Certification and Documentation

The Recipient must submit to the Division certification of payments for all

eligible project costs. The Division will disburse the non-match portion (e.g. 83.33%) of the eligible project costs, provided the Recipient has certified that all past disbursements have been paid to the consultants, contractors or vendors and submitted copies of the canceled checks or other documentation of payment acceptable to the Division, on a quarterly basis, documenting payment of CWSRF funds disbursed from the CWSRF and the match amounts to the consultants, contractors or vendors.

VI. REFINANCING AND RESTRUCTURING

A. Existing Small DAC and small SDAC Debt

1. Existing non-CWSRF debts may be refinanced with CWSRF funds if the Division determines that all of the following conditions exist:
 - a. The applicant is a Small DAC or Small SDAC;
 - b. The applicant's debt was incurred for an Eligible Project.
 - c. The existing debt(s) were the result of external and non-CWSRF borrowing by the applicant;
 - d. Refinancing the debt is necessary to complete a new Eligible Project at a payment that is affordable for the Small DAC, or Small SDAC; and
 - e. The Division has identified sufficient available funds for this purpose.
2. To be eligible for refinancing, CWSRF projects that include work completed on or after October 30, 2009, must comply with Davis Bacon requirements, at least for the portion of construction work completed on or after October 30, 2009. (See *Appendix O.*)
3. To be eligible for refinancing, CWSRF projects that include work completed on or after June 10, 2014, must comply with American Iron and Steel (AIS) requirements, at least for the portion of construction work completed on or after June 10, 2014. (See *Appendix O.*)
4. In addition to the specific requirements of this section, to be eligible for refinancing, CWSRF projects must comply with all applicable state and federal rules, including requirements imposed as part of a Capitalization Grant.

B. Restructuring for Financially Distressed Recipients

The Division may restructure existing CWSRF loans for financial distress or financial emergencies.

VII. WATER RECYCLING AND SMALL DAC/SDAC PROJECTS

The State Water Board generally funds water recycling projects and Small DAC and Small SDAC wastewater projects in accordance with this Policy and the IUP.

- A. Where funding for these projects is not derived from, dependent upon, or bundled

with CWSRF monies, the Deputy Director may waive federal CWSRF requirements, as appropriate.

- B. Water recycling projects serve water supply needs. The State Water Board will fund water recycling projects in accordance with this Policy and the requirements of the Water Recycling Funding Program (WRFP) Guidelines. Incentives available to these projects, including Non-Repayable Financing or reduced interest rates, will be described in the CWSRF IUP.
- C. The State Water Board will fund Small DAC and Small SDAC wastewater projects in accordance with this Policy. Incentives available to these projects, including non-repayable financing and reduced interest rates, will be described in the CWSRF IUP.
- D. Consolidation Incentive

To the extent possible based on funds available, and to encourage the regionalization of wastewater service, the Deputy Director may offer funding for an eligible capital project that solely benefits the receiving system (Incentive Project) to a receiving system that, with State Water Board funding, completes a full physical consolidation with a previously unsewered small DAC, or with existing wastewater systems(s) serving small DAC(s) that are not owned by the receiving water system (Consolidation Incentives). A receiving system is the system that remains in place after a consolidation project is complete.

The Consolidation Incentive may be applied to one or more eligible capital improvement projects chosen by a receiving system and approved by DFA. Incentive Project financing may be combined with other financing options, including CWSRF funds, to fully fund an Incentive Project. The subsidized financing for the Incentive Project is in addition to any subsidized financing for the associated consolidation project. Consolidation Incentives, which may include non-repayable financing and reduced interest rates, will be described in the CWSRF IUP.

Receiving systems interested in receiving Consolidation Incentives should submit, at minimum, a CWSRF General Application Package for the Incentive Project(s) to DFA before completion of the associated consolidation project(s). The application should indicate that it is for an Incentive Project and identify the associated consolidation project(s). The receiving system must also complete and submit a full CWSRF application for the Incentive Project(s) within one year of completion of the associated consolidation project(s). The Deputy Director is authorized to allow additional time for good cause.

VIII. PLANNING/DESIGN FINANCING

Planning and design costs are eligible for reimbursement as part of a Construction/Implementation Financing, if not previously financed. However, applicants also have the option to apply for separate planning, design, or planning and design financing. Approval of planning/design financing does not obligate the State Water Board to provide subsequent Construction/Implementation Financing.

An applicant must submit all documents noted below, unless otherwise specified in the applicable Intended Use Plan, or otherwise authorized by the Deputy Director of the Division for good cause, to obtain planning/design financing. *Appendix E* contains the application for Planning/Design Financing. In order to maintain a complete application, the Applicant must submit updated information as requested by the Division. The Division may require that the Applicant submit additional information or certifications necessary or useful to ensure that the financing complies with applicable state and federal requirements. Priority will be given to applications on the Fundable List.

A. Planning/Design Application Requirements

If the applicant intends to also apply for a Construction/Implementation Financing Agreement for the same project, then the Plan of Study must ensure development of all documents necessary to receive approval of a Construction/Implementation Financing Agreement. The Division will apply the Credit/Financial Guidelines in the review of each planning/design financing application or request for securing additional debt (see *Appendix N*).

1. General Planning Design Application Requirements.

The following requirements apply to all planning/design applications. Applicants that are applying for repayable Planning/Design Financing must also follow the requirements given in subsection VIII.B.2 below. Applicants who do not comply with the requirements of subsection VIII.B.2 will not be eligible for repayable financial assistance.

The application for planning/design financing must include the following:

- a. General Information, including basic Applicant and Project information needed by the Division to process the application, and information to assist in completing the priority scoring process.
- b. Technical information:
 - i. A Plan of Study that includes the following components:
 - (A) Description of water quality problem(s) to be addressed (including information about existing or pending enforcement actions);
 - (B) Scope of Work that considers the following:
 1. Budget;
 2. Schedule (including deliverables and submittal dates); and
 3. If the Plan of Study includes design work, it should explain the status of planning work. The Division may request to review existing planning documents prior to approving design financing.
 - ii. Water Rights (See Section IX.B.2.b of this Policy for requirements.)

iii. Water Management (See Sections IX.B.2.d of this Policy for requirements.)

iv. Water Metering

Applicants must certify compliance with the water metering requirements of Section 529.5 of the Water Code or that the water metering requirements are not applicable to the Applicant.⁵

c. Environmental information:

Applicants must provide information requested by the Division for the Division to complete its environmental review under CEQA and the SERP.

d. Financial information:

- i. The Applicant must submit a resolution or ordinance adopted by its governing board authorizing submittal of the application and designating a board member, official, or employee by title as the applicant's Authorized Representative (in the case of certain private entities, other documentation may be acceptable to the Division). The Authorized Representative, or the Authorized Representative's designee, must be authorized to signatory to all relevant financing documents and supporting materials and certifications on behalf of the applicant. (See the Authorized Representative resolution template posted on the Division's website.)
- ii. The Applicant must also submit resolutions or ordinances documenting rate setting in compliance with applicable laws, including Proposition 218 or California Public Utility Commission (CPUC) approval, as applicable, upon request of the Division.
- iii. The Applicant must notify the Division if it has any of the following, and must provide the following at the Division's request:
 - A copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of the parties.
 - The correct name of its proposed revenue source and related enterprise fund from which Operations and Maintenance Costs are anticipated to be paid (e.g., Wastewater Revenues and Wastewater Enterprise Fund).
 - A debt management policy.
- iv. The Applicant must provide all financial statements requested by the Division, preferably audited financial statements. The Division will

⁵ Projects involving the installation of water supply meters are not required to meet these requirements when applying for financing.

generally request three (3) years of financial statements. The financial statements may include the current year (if available), and the two (2) previous years, or three (3) previous years if the current year has not been completed.

(A) The Applicant must identify any restricted funds and the reason for such restrictions.

(B) If the system is privately owned, and lacks audited financial statements, the Applicant must provide tax returns involving the system for the years requested by the Division. The Division will generally request three (3) years. The Applicant's submitted information will not be deemed confidential.

(C) The Applicant must provide any adopted budget for future year(s) and a projected budget through first payment if requested by Division. Budget projections may include proposed taxes, assessments, and/or fee or service charges (as applicable).

- v. The Applicant must describe any issues related to its proposed planning/design financing, including but not limited to contractual or ratepayer/taxpayer disputes, pending litigation, audit findings (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity), disputes, or property right issues associated with the proposed project.

2. Repayable Planning/Design Application Requirements.

Applications for repayable financial assistance for planning/design must include all of the information required in subsection VIII.B.1 above. Additionally, applications for repayable financial assistance for planning/design must include the information required by this subsection VIII.B.2. Applicants that do not submit this information will not be eligible for repayable financial assistance.

The application for repayable planning/design financing must include the following:

a. Financial information:

- i. The Applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of the parties.
- ii. The Applicant must provide the correct name of its proposed pledged revenue source and related enterprise fund to the Division (e.g., Wastewater Revenues and Wastewater Enterprise Fund).
- iii. The Applicant must provide three (3) years of financial statements, preferably audited. The financial statements may include the current year

(if available), and the two (2) previous years, or three (3) previous years if the current year has not been completed.

- (A) The Applicant must identify any restricted funds and the reason for such restrictions.
 - (B) If the system is privately owned, and lacks audited financial statements, the Applicant must provide tax returns involving the system for the most recent three (3) years. The Applicant's submitted information will not be deemed confidential.
 - (C) The Applicant must provide any adopted budget for future year(s) and a projected budget through first payment if requested by Division. Budget projections may include proposed taxes, assessments, and/or fee or service charges (as applicable).
 - (D) As applicable, the Applicant must provide its current average residential sewer/water rate and calculations employed to represent such a rate, if requested by the Division. If the average residential sewer/water rate is expected to increase following submittal of an application as a result of previously adopted sewer/water rate increases, then the applicant shall provide the anticipated average residential sewer/water rates and an adopted schedule for their implementation.
- iv. Where the Applicant is a local government, it must submit a copy of its debt management policy.
- v. Existing debt:
- (A) The Applicant must submit a schedule of all material debt, both short-term and long-term. This includes debt that reflects an obligation relying on the same revenue as the planning and design financing, and debt that is otherwise material to the transaction.
 - (B) The Applicant must submit a copy of each material debt document (e.g., indenture, installment agreement, loan, note, etc.) and credit instrument (e.g., swaps, hedges, etc.). Where the relevant debt is a bond series, the applicant must submit both the Official Statement and the underlying debt document (e.g., indenture, pledge resolution, etc.).
 - (C) If the Applicant has no material debt, the applicant's Authorized Representative must certify this.
 - (D) The Applicant must identify any conditions in material debt obligations that must be satisfied prior to executing the Financing Agreement.
 - (E) The Applicant must identify any debt limit to which it is subject.

b. Coverage

All applicants will be expected to comply with the coverage requirements provided for in *Appendix N*. The Division will employ appropriate credit criteria when evaluating all pledged sources of repayment.

c. Additional Debt

Additional debt will be evaluated in accordance with *Appendix N*.

d. Material Events, Existing Debt, and Debt Limits

- i. The Applicant must notify the Division regarding current, prior, or pending material events (e.g., bankruptcy, defaults, litigation, Grand Jury findings or indictments) and provide all information requested by the Division.
- ii. The Applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the CWSRF Financing Agreement.
- iii. The Applicant must identify any debt limit to which it is subject.

e. New Tax, Fee, Charge or Assessments Projections

The Applicant must provide budget projections based on the proposed taxes, fees, charges, or assessments if a new tax, fee, charge, or assessment will be a PRF.

B. Eligible Planning/Design Costs

1. Costs that were incurred by the applicant may be reimbursed provided all applicable state and federal requirements have been met by the applicant. If the applicant incurs planning and design costs before execution of the Financing Agreement, it does so at its own risk.
2. Eligible costs include the preparation of planning/design documents, including, but not limited to:
 - a. Feasibility studies and project reports
 - b. Plans and specifications
 - c. Financial analyses
 - d. Engineering and design documents
 - e. Preparation of environmental documents
 - f. Legal costs and fees
 - g. Value engineering

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- h. Capital improvement plans
 - i. Asset management plans
 - j. Rate studies and costs related to Proposition 218 proceedings
 - k. Financing applications
 - l. Water conservation plans
 - m. Sewer system evaluation/surveys
 - n. Environmental management systems
 - o. Reasonable administrative and legal costs associated with land acquisition (actual land acquisition is not eligible as a planning/design cost)
 - p. Water audits
 - q. Energy audits
 - r. Fiscal sustainability plans
3. The Applicant may include a Contingency amount in its application to cover unforeseen eligible costs. Any Contingency work shall require prior approval from the Division. The IUP may limit the amount of Contingency available to projects.
 4. Ineligible Costs
 - a. Land acquisition
 - b. Construction management costs
 - c. Administration costs associated with construction/implementation
 - d. Food and drink and/or service thereof, for meetings or events, including catering costs

C. Planning/Design Financing Terms for Repayable Planning/Design Financing

1. Interest

Generally, the interest rate shall be fifty percent (50%) of the most recent interest rate paid by the State on general obligation bonds issued by the State Treasurer's Office as of the date the Division initiates preparation of the financing agreement document for routing and signoff or the State Water Board approves the financing, whichever is first, rounded up to the nearest ten basis points (0.1%). For Small SDACs and Small DACs, the interest rate may be reduced, and will be described in the CWSRF IUP.

2. Amortization

Repayments will be amortized by equal annual payments over five or ten years, whichever the applicant selects, unless restructured. The first annual payment will be due no later than one year following the completion of planning/design. As a courtesy, the Division will issue a revised payment schedule after the Recipient submits an acceptable final reimbursement request. All payments must be sent to the address referenced in Section XIV.D.3 of this Policy. The grace period on the payment is specified in Section XIV.D.2 of this Policy.

3. Restructured Planning/Design Financing

A planning/design Financing Agreement may be amended and restructured so that the amortized balance of the planning/design Financing Agreement, meaning the remaining principal and any interest accrued prior to the restructuring, will be re-amortized using the interest rate and the length of the amortization period of the Financing Agreement for the Project. The planning completion date will generally be amended to match the completion of construction date of the Project. The amortized interest on the restructured planning/design Financing Agreement will accrue at the new rate, and the revised amortization schedule will take effect, generally starting on the completion of construction date.

D. Planning/Design Financing Disbursements

1. The Division will not disburse funds until after the Financing Agreement is executed, and any disbursements are entirely conditioned on such execution. Costs submitted to the Division must be currently due and payable, but the Recipient need not have actually paid the costs before requesting reimbursements. *Appendix F* contains specific instructions for requesting reimbursements.
2. In general, the Recipient must submit all draft deliverables prior to disbursement beyond 70 percent of the financing amount, and it must submit all final deliverables to the Division prior to disbursement beyond 90 percent of the financing amount.
 - a. If the Recipient intends to restructure the planning/design Financing Agreement as part of a CWSRF Construction/Implementation Financing Agreement, approval of the Construction/Implementation financing will constitute Division acceptance of the final deliverables.
 - b. For short term financings for the preparation of planning/design documents not restructured as part of a Construction/Implementation Financing Agreement, the Division will issue a letter accepting completion of the original scope of work, as appropriate.
3. The Division must receive the final reimbursement request promptly after completion of planning/design. As a courtesy, the Division will normally send a reminder notice approximately three (3) months before the agreement's

scheduled completion of planning/design, but prompt submittal of the final reimbursement request remains the responsibility of the Recipient. If the Division does not receive the final reimbursement request within six (6) months of the planning/design completion date, it may deobligate the undisbursed balance of the planning/design financing agreement.

IX. CONSTRUCTION/IMPLEMENTATION FINANCING

An applicant must submit all documents identified by the Division in the application forms, unless otherwise specified in the applicable Intended Use Plan, or otherwise authorized by the Deputy Director of the Division for good cause, to obtain Construction/Implementation Financing. *Appendix G* contains the application for Construction/Implementation financing. To maintain a complete application, the Applicant must submit updated information as requested by the Division. The Division may require that the Applicant submit additional information or certifications necessary or useful to ensure that the financing complies with applicable state and federal requirements.

Eligible Project types will be reflected in the current year's IUP, and generally conform to the list of eligible projects set forth in the CWA. (33 U.S.C. § 1383). Applicants should contact the Division for assistance with eligibility determinations.

A. General

1. The application is organized into four packages: (1) general information, (2) technical, (3) environmental, and (4) financial.
2. To expedite financing, the Division will assist applicants with completing certain program requirements during the application review. The Division may also offer limited assistance to qualified applicants to bolster the administrative and managerial capacity of those applicants.
3. To assist repeat applicants with financing long-term capital needs, the Division will work with them to update and maintain on-file reports/plans/documents that fulfill the requirements of this Section to minimize the resubmission of information needed to complete the requirements of this section.

B. Application Requirements

1. General Information Package
 - a. This package includes basic applicant and Project information needed by the Division to process the application, and information to assist in completing the priority scoring process.
2. Technical Package
 - a. This package includes information and certifications necessary to evaluate the technical feasibility of the Project, its ability to meet applicable water quality standards, objectives, or permit requirements, and compliance with applicable state and federal program requirements.

b. Water Rights

- i. Section 5103 of the Water Code requires water diverters to submit records of water diversions to the State Water Board's Division of Water Rights. If the Applicant is not current on these submittals, the Division will not execute a financing agreement or disburse any funds until the reports are submitted unless the Deputy Director determines that (a) the financing will assist the applicant in complying with the reporting requirements, and (b) the applicant has submitted to the State Water Board a one-year schedule for complying with the reporting requirement.
- ii. The Applicant must provide information to allow the Division to determine whether a petition for change must be filed and approved with the State Water Board's Division of Water Rights for the project.

c. Project Report and Technical Certifications

- i. The applicant must submit a Project report, or its equivalent, that contains the information outlined in *Appendix G*, as appropriate to the Project. Engineering reports must be signed and stamped by a registered Professional Engineer. The contents of the report outlined in *Appendix G* are not prescriptive, but are intended to provide Division staff with sufficient information to evaluate whether the Project is eligible for CWSRF financing, meets applicable technical requirements, and is likely to meet applicable water quality objectives and standards. Division staff may require the applicant to submit additional information to assess the Project's ability to meet water quality objectives or plans.
- ii. Generally for all applications, the Applicant shall develop and implement a fiscal sustainability plan (FSP), or its equivalent, or its Authorized Representative shall certify that it has developed and implemented such a plan. The FSP will at a minimum include:
 - (A) an inventory of critical assets that are a part of the treatment works;
 - (B) an evaluation of the condition and performance of inventoried assets or asset groupings;
 - (C) a certification that the Recipient has evaluated and will be implementing water and energy conservation efforts, to the maximum extent practicable, as part of the plan; and
 - (D) a plan for maintaining, repairing, and, as necessary, replacing the treatment works and a plan for funding such activities.
- iii. For all applications, the Applicant shall certify that they have:
 - (A) studied and evaluated the cost and effectiveness of the processes, materials, techniques, and technologies for carrying out the proposed project or activity for which assistance is sought under this title; and

(B) selected, to the maximum extent practicable, a project or activity that maximizes the potential for efficient water use, reuse, recapture, and conservation, and energy conservation, taking into account:

1. the cost of constructing the Project or activity;
2. the cost of operating and maintaining the Project or activity over the life of the Project or activity; and
3. the cost of replacing the Project or activity.

d. Water Conservation and Water Management

- i. If the Applicant is a water supplier, the State Water Board will not execute a financing agreement until the Applicant has certified that it has complied with the provisions of Division 6 of the Water Code applicable to the applicant.
- ii. If the Applicant is not a water supplier, the State Water Board will not execute a financing agreement until the Applicant has verified to the satisfaction of the Deputy Director of the Division that the water suppliers in its service or project area have complied with the provisions of Division 6 of the Water Code applicable to the area's water suppliers.

iii. Water Metering

The State Water Board will not execute a financing agreement until the Applicant has certified that it has complied with the water metering requirements of Section 529.5 of the Water Code or that the water metering requirements are not applicable to the Applicant.

e. General Plans

- i. If the Applicant is responsible for adopting the General Plan(s) for the area(s) affected by a proposed Project, the Division may not approve financing for the Project until the Applicant's Authorized Representative has certified that the Applicant has adopted the land use and housing elements of its General Plan as required by Section 65302 of the Government Code and that the Project is consistent with the adopted General Plan.
- ii. If the Applicant is not responsible for adopting the General Plan(s) for the area(s) affected by the Project, then the Division may not approve financing until the Applicant's Authorized Representative certifies that at least seventy-five (75) percent of the area affected by the Project includes cities and counties with adopted land use and housing elements. The Applicant's Authorized Representative will also certify that the Applicant notified the agency(ies) responsible for adopting the General Plan(s) and provided a reasonable opportunity to comment on the Project's consistency with the General Plan(s). The Applicant's

Authorized Representative must certify that the Applicant considered those comments during development of the Project.

3. Environmental Package

- a. This package includes information and documentation necessary to evaluate applicable state and federal environmental requirements.
- b. The Applicant must provide complete and adequate Project specific environmental documentation to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet applicable federal environmental review requirements. In accordance with the Operating Agreement, the State Water Board uses the State Environmental Review Process (SERP) to fulfill these requirements for CWSRF projects. (See *Appendix I.*)

4. Financial Security Package

This package includes information and certifications necessary to evaluate the financial security and capacity of the Applicant and the proposed Financing Agreement.

a. General Requirements

- i. The Division will review the Financial Security Package, including the financial security documents when applicable, to determine the applicant's ability to operate and maintain the proposed Project, and for repayable Financing Agreements, the applicant's credit capacity.
- ii. The Division will apply the Financial Review Guidelines in the review of each Financial Security Package or request for securing additional debt (see *Appendix N*).
- iii. If the applicant's finances cannot support the funding request, Division staff will work with the applicant to find a way to finance the project(s), if feasible.
- iv. The Applicant must comply with all State Water Board funding agreements to which it is a party, including compliance with any and all financial covenants.

b. Coverage and Reserve

- i. For repayable Financing Agreements, the Applicant will normally be expected to establish and maintain, until the Financing Agreement is repaid in full, a restricted reserve equal to one year's debt service from available cash prior to the construction completion date, unless the Division determines that credit or tax considerations support a different result.

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- ii. All applicants will be expected to comply with the coverage requirements provided for in *Appendix N*.
 - iii. For repayable Financing Agreements, the Applicant must comply with existing coverage covenants or with the CWSRF coverage requirements included in *Appendix N*, whichever covenants or requirements provide greater coverage. The Division will employ appropriate credit criteria to evaluating all pledged sources of repayment.
- c. Additional Debt for Repayable Financing Agreements
- i. The State Water Board normally expects the CWSRF debt obligation's lien status to be on parity with the applicant's senior/first tier lien debt obligations, unless the Division determines that credit considerations compel a lower lien status. In cases where credit considerations compel a lower lien status, the financing agreement will require that the Recipient's senior/first tier of debt be closed to any additional debt, except for additional obligations meeting the conditions set forth in paragraph (iii) of this section.
 - ii. Additional obligations secured by pledged sources of repayment may be senior to CWSRF obligations under the following conditions:
 - (A) The CWSRF agreement provides for 100 percent forgiveness of principal; or
 - (B) The senior obligation meets the conditions set forth in paragraph iii of this section.
 - iii. Additional obligations that meet the coverage requirements of this Policy, including the coverage requirements provided in *Appendix N*, and are secured by the PRF may be on parity with the CWSRF obligations.
 - iv. The Applicant may refund debt with new debt if all of the following conditions are met:
 - (A) The new debt refunds or refinances existing debt with the same lien position as that existing debt;
 - (B) The new debt has the same or earlier repayment term as the refunded debt;
 - (C) The new debt service is the same or lower than the existing debt service; and
 - (D) The new debt will not diminish the applicant's ability to repay its CWSRF obligation(s).
 - v. Applicants with assessment-backed financing must meet the assessment related requirements laid out in *Appendix N*.

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- vi. Special tax-based financing will require the Division's consent for additional debt.
 - d. Proposed Loan Security/Pledged Revenues and Funds (PRF) for Repayable Financing Agreements
 - i. The Applicant must identify all sources of security to be pledged.
 - ii. The loan security may include pledged PRF, real property, and other appropriate assets.
 - iii. A PRF may be a special tax, user fees, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. As stated in *Appendix N*, typically, assessment-backed financing will be combined with a revenue pledge.
 - iv. An applicant that is not a public agency must document its authority to bind itself to the Financing Agreement and grant adequate security in relevant assets and revenues for the repayment of the loan. It must also submit draft documents in support of filing all relevant liens, including a Uniform Commercial Code (UCC) lien with the Secretary of State.
 - e. Existing Debt for Repayable Financing Agreements
 - i. If the Applicant has no other material debt, the Agency's Authorized Representative must certify this.
 - ii. The Applicant must submit a schedule of all material debt, both short-term and long-term (e.g., secured by the PRF or the System, or debt that is otherwise material to the transaction), along with a copy of each relevant debt document (e.g., indenture, installment agreement, loan, or note, etc.).
 - iii. The Applicant must submit a copy of each material debt document (e.g., indenture, installment agreement, loan, note, etc.) and credit instrument (e.g., swaps, hedges, etc.). Where the relevant debt is a bond series, the Applicant must submit both the official statement and the underlying debt document (e.g., indenture, pledge resolution, etc.).
 - f. Debt Management Policy

For repayable Financing Agreements where the applicant is a local government, it must submit a copy of its debt management policy.
 - g. Future Capital Needs

The Applicant must describe its capital improvement plans and the long-term indebtedness needed to fund its future capital improvements. The Applicant must provide any formal capital improvement plan it has to the Division.
 - h. Financial Statements and Budget

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- i. The Applicant must provide all financial statements requested by the Division, preferably audited financial statements. The Division will generally request (3) three years of financial statements. If the system is privately owned, and lacks audited financial statements, the Applicant must provide tax returns involving the system for the years requested by the Division.
 - ii. The Applicant must identify any restricted funds and the reason for the restrictions.
 - iii. The Applicant must provide any adopted budget for future year(s) and a projected budget through first payment, if requested by Division. Budget projections may include proposed taxes, assessments, and/or fee or service charges (as applicable).
 - iv. As applicable, the Applicant must provide its current average residential sewer/water rate and calculations employed to represent such a rate, if requested by the Division. If the average residential sewer/water rate is expected to increase following submittal of an application as a result of previously adopted sewer/water rate increases, then the Applicant shall provide the anticipated average residential sewer/water rates and an adopted schedule for their implementation.

- i. Tax Questionnaire and Reimbursement Resolution

All public agency applicants for repayable Financing Agreements must provide certain information for the State Water Board's tax counsel to assess the applicant's ability to receive CWSRF funds from tax-exempt revenue bond proceeds. While the reimbursement resolution establishes a potential date for reimbursement, the actual date and limitations for eligible construction costs will be stated in the Financing Agreement.

For Projects that have received or may receive CWSRF funds from tax-exempt revenue bond proceeds, the Division may periodically require the Applicant to certify its ongoing compliance with tax requirements.

- j. Applicant Resolution(s)/Ordinances

The Applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a Financing Agreement signatory to all relevant financing documents and supporting materials. The Applicant for a repayable Financing Agreement must submit a reimbursement resolution meeting the reimbursement requirements for compliance with federal tax laws and a resolution authorizing the Financing Agreement (closing resolution). The Applicant must also submit resolutions or ordinances documenting rate setting in compliance with applicable laws, including Proposition 218 or CPUC approval, as applicable.

- k. Material events, existing debt, and debt limits

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- i. The Applicant must notify the Division regarding current, prior, or pending material events (including, but not limited to, bankruptcy, defaults, litigation, grand jury findings/indictments) and provide all information requested by the Division.
 - ii. The Applicant must identify any conditions in material debt obligations that must be satisfied prior to executing the CWSRF Financing Agreement.
 - iii. The Applicant must identify any debt limit to which it is subject.
- I. Relevant service, management, operating, or joint powers agreements

The Applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.

- m. Private Entities

Notwithstanding any requirement in this section, private entity applicants must comply with the requirements provided for in *Appendix N*.

C. Construction Eligibility

Project costs are eligible to the extent consistent with federal and state authority. The following are general categories of eligible and ineligible costs. The Applicant must segregate the eligible and ineligible costs. When cost categories include a combination of eligible and ineligible costs, the ineligible costs will be estimated on an incremental basis.

1. Eligible Project Costs

- a. Treatment facilities, including new collection systems to serve existing homes or businesses or new development in infill areas within the existing service area, alternative treatment facilities such as leach fields, mound systems, and constructed wetlands, and equipment or systems to reduce energy use or reduce the effects of climate change.
- b. For treatment works Projects, the leasing and fee-simple purchase of land necessary for construction. This includes surface and subsurface easements, a place to store equipment and material during construction, land needed to locate eligible Projects, and land integral to the treatment process (e.g., land for effluent storage, effluent application, recharge basins, or for sludge disposal). Value appraisal and the cost of purchasing a wastewater system may be eligible as specified in the IUP. Where the Financing Agreement provides exclusively Non-Repayable Financing, the Division will only reimburse for land purchase costs up to an approved appraisal amount. The State Water Board may be recorded as first lienholder on the deed of trust, and the Division may release the lien when no longer necessary to satisfy the Project's objectives.

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- c. Pre-purchased material and equipment used in the Project and purchased in accordance with state and federal law;
 - d. Reserve capacity for treatment works per Section IX.D.1 below;
 - e. Administration, maintenance, and laboratory building space directly related to the operation of the eligible Project;
 - f. Process control systems;
 - g. Preparation of environmental documents, and implementation of environmental mitigation measures and monitoring required by the Division and state and/or federal agencies;
 - h. Change Orders approved by the Division for increased construction costs (not planning/design costs) provided the costs are Eligible Project Costs, consistent with the original scope of the project and the remaining Contingency and unused budget amounts included in the Financing Agreement.
 - i. Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the WRFPP Guidelines;
 - j. On-site solids handling systems necessary to meet Regional Water Board waste discharge permit requirements, including systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal;
 - k. Stationary and mobile equipment that are integral to the treatment, collection, or sludge handling processes, including, but not limited to, front loaders for sludge drying beds, injection/spray irrigation equipment for dedicated land disposal sites, vector trucks, and compost windrow turners. Dedicated equipment must be confined to the treatment, collection, or sludge handling systems for which it was purchased;
 - l. Costs for planning, design, construction management, value engineering, and administration;
 - m. Costs to prepare an Environmental Management System or Asset Management System, or a "fiscal sustainability plan" as required by Section IX of this Policy not previously financed through CWSRF planning/design financing;
 - n. Costs to prepare new or update existing Operation and Maintenance Manuals for funded facilities;
 - o. Equipment necessary to maintain the eligible treatment facilities, including the manufacturer's list of spare parts;
 - p. Necessary insurance related to the construction contract;

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- q. Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system. Purchase of capacity is not considered refinancing;
 - r. Recycled water systems (not including gray water systems);
 - i. Recycled water treatment works;
 - ii. Recycled water storage facilities;
 - iii. Recycled water pumping facilities;
 - iv. Recycled water groundwater recharge facilities;
 - v. Recycled water distribution systems;
 - vi. Recycled water onsite user retrofits; and
 - vii. Recycled water capacity purchases (buy in costs).
 - s. Water conservation measures:
 - i. Installation of water supply meters;
 - ii. Plumbing fixture retrofits or replacements;
 - iii. Efficient landscape irrigation equipment;
 - iv. Public water conservation education programs⁶, and
 - v. Gray water systems
 - t. Non-Treatment Works Projects
 - i. Construction of facilities to treat, reduce, or prevent NPS or point source pollution not required or specified by a National Pollution Discharge Elimination System permit, including reimbursement of planning, design, and environmental documents, project administration, and construction management for facilities construction.
 - ii. Decommissioning of septic tanks and construction of new private laterals;
 - iii. Costs necessary to implement nonstructural components of water quality control projects;
 - iv. Purchase of land or interests in land necessary for the project or for the purposes of protecting or preserving beneficial uses, including necessary mitigation measures and project implementation;

⁶Public water education conservation programs may be eligible on a case-by-case basis.

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- v. Demonstration projects;
 - vi. Education and outreach programs⁷ and
 - vii. Project performance monitoring.
- u. Other eligible costs as defined in the Clean Water Act unless restricted by State statute or other authority.

2. Ineligible Costs

- a. New collection systems not serving existing homes and businesses unless the new collection system serves an infill Project within an existing service area.
- b. Honoraria;
- c. Engineering costs included as part of the construction bid for other than design-build Projects;
- d. Decorative items (such as, but not limited to art works, sculptures, reflective ponds, fountains);
- e. Non-wastewater solids facilities solely devoted to pasteurization, co-generation, conditioning, heat drying, thermal reduction, packaging, or distribution biosolids;
- f. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
- g. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;
- h. All other items not included in the construction contract except allowances;
- i. Overhead unrelated to the project;
- j. Catering Costs;
- k. Replacement of facilities previously funded by Clean Water grants or CWSRF financing except under one of the following circumstances:
 - i. Where upgrading treatment systems or technology is necessary to achieve the Regional Water Board-mandated level of treatment and the replacement of previously funded facilities is necessary to achieve the mandated enhanced level of treatment;
 - ii. Where the facility or portion of the facility can no longer provide reliable service because it has reached the end of its useful life;

⁷Education and outreach programs may be eligible on a case-by-case basis.

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- iii. Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable or cost-effective operation of the facility; or
 - iv. Where a proposed water recycling Project:
 - (A) Meets the definition of an eligible water recycling project pursuant to current WRFP Guidelines; and
 - (B) Requires the replacement of previously funded facilities to complete the recycling project.

D. Capacity Limitations

1. Treatment Works Capacity

- a. The Division will determine eligible capacity of treatment works using average dry weather flow and appropriate peak flows in accordance with population and per capita flow estimates provided by the Applicant. The Applicant will be responsible for documenting, in the Project Report, the average dry weather flow and peaking factors used for the project. Project capacity must be consistent with environmental constraints.
 - i. The Division will calculate eligible capacity by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the Division will base the per capita flow on the existing population and the measured flow. This flow will be deemed to include the entire eligible project flows (residential, commercial, existing federal facilities, existing industrial, and infiltration/inflow). The Division will determine eligible capacity prior to the funding approval.
 - ii. Eligible design capacity for treatment facilities may be based on flow projections up to a period of twenty (20) years from the initiation of operation. For Projects designed to serve a capacity greater than 20 years after initiation of operation, the Division will determine eligible and ineligible costs on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.
 - iii. Eligible design capacity for collection systems, interceptors, and outfalls may be based on flow projections up to forty (40) years from the initiation of operation. The Division will allocate between eligible and ineligible costs for capacity needs more than forty years after initiation of operation on an incremental basis. The Division will determine eligible capacity for multiple phased Projects on a case-by-case basis.

b. Population Projections

The applicant must submit population projections from an independent source (i.e., Regional Council of Governments, appropriate local planning agencies, Department of Finance, or Area-wide Water Quality

Management Plans prepared pursuant to Section 208 of the CWA). The Division will use population or flow projections to determine the eligible treatment works capacity. The Division may require additional documentation to support the projection's reasonableness. The applicant must include a detailed discussion of the local projections in the Project Report.

2. Non-Treatment Works Capacity

The Division will determine eligible capacity of non-treatment works projects using appropriate engineering criteria and data provided by the applicant. Project capacity must be consistent with environmental constraints.

X. FINANCING AGREEMENT

A. Financing Approval

1. The applicant may receive a Financing Agreement after its application has been reviewed and approved.
 - a. For routine, noncontroversial, Projects or applications for planning/design financing on the Fundable List, the Executive Director or Deputy Director is authorized to approve financing. Non-routine or controversial fundable Projects or applications for planning/design financing will be considered by the State Water Board at a Board meeting.
 - b. Upon review and approval of required documents, the Division will prepare a Financing Agreement. In general, the Division will prepare one Financing Agreement for each of the Recipient's construction contracts to construct the Project, but it may at its discretion may provide a Financing Agreement that includes separate phases for the Project. The Division will not disburse funds until the Financing Agreement is executed and all conditions for disbursement set forth in the Financing Agreement have been met.
2. The Division may issue a notice to an applicant at its request that:
 - a. Identifies costs eligible for the Financing Agreement;
 - b. Identifies draft terms and conditions, including conditions precedent, that will be applicable to a Financing Agreement and related disbursements provided that specific conditions are met; and
 - c. Includes other relevant information.

B. Execution of the Financing Agreement

The Executive Director or Deputy Director may execute Financing Agreements and amendments on behalf of the State Water Board for eligible Projects or applications for planning/design financing with approved applications.

1. Conditions and Critical Due Date(s)

- a. Financing Agreements may include appropriate conditions and critical due dates to ensure that Projects or planning/design work are completed successfully and expeditiously in conformance with applicable requirements. If a recipient misses a critical due date or fails to fulfill a condition of the Agreement, the Deputy Director may terminate the agreement.
- b. The Completion of Construction and Final Disbursement Request dates will be established by mutual agreement between the Division and the Recipient.
- c. At closing, the applicant will generally be expected to submit an opinion of its general counsel and, if relevant, its bond counsel. Any such opinion must be satisfactory to the Division's counsel and should be substantially similar to the relevant template in *Appendix Q*.
- d. For repayable financing, the Applicant must submit a resolution authorizing the financing at closing.
- e. An applicant may start construction prior to execution of the financing agreement at its own risk. Costs incurred prior to execution of a financial Financing assistance Agreement are not guaranteed to be approved eligible for reimbursement, nor is an executed Financing Agreement guaranteed to be executed.
- f. Applicants using professional service providers (e.g., professional engineering, environmental, land surveying, project management) must base service provider engagements on demonstrated competence and qualifications, and shall ensure that provider rates are reasonable and consistent with state laws regarding contracting for professional services.
- g. Public agency applicants must comply with applicable state or local bidding requirements when contracting for construction work. Private entity applicants are required to comply with the procedures and requirements set forth in this Policy unless waived by the Deputy Director of the Division. The Applicant will be required to certify that it has complied with all applicable contracting requirements.

2. Budget

- a. The budget in the Financing Agreement will be based on the budget requested by the applicant, subject to the Division's approval. The Applicant may include a Contingency amount in its budget. The IUP may limit the amount of Contingency available to Projects or planning/design work.
- b. Any request for an increase in the Financing Agreement must be submitted to the Division prior to incurring the additional costs and is subject to review and denial by the Division.

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- c. Where the financing agreement provides Non-Repayable Financing, the amount of Non-Repayable Financing cannot exceed the limits otherwise established in law and policy. The Division will not approve a Financing Agreement that results in these limits being exceeded.

3. Compliance with Federal and State Statutes and Authorities

An applicant must agree to comply with, and require its contractors and subcontractors to comply with, all applicable federal and state laws, rules and regulations, permits, and all applicable local ordinances, specifically including, but not limited to, environmental, procurement and safety laws, rules, regulations, permits, ordinances, and labor compliance requirements. The Financing Agreement will include the applicant's certification that it has complied, or will comply, with a non-exclusive list of federal and state laws, as well as any other applicable federal and state laws. Additional details regarding the following federal requirements are contained in the Appendices:

- a. Disadvantaged Business Enterprise (DBE) (See *Appendix J.*)
- b. Davis-Bacon Wage Requirements (See *Appendix O.*)
- c. American Iron and Steel (AIS) (See *Appendix O.*)

XI. DISBURSEMENTS OF PROJECT FUNDS

A. Disbursements in General

1. All disbursements are subject to applicable federal and state requirements and/or limitations notwithstanding any provisions of this Policy. Disbursement of funds is contingent on execution of a Financing Agreement, and the State Water Board will not disburse funds until after a Financing Agreement has been executed. Once the Financing Agreement has been executed, a Recipient may submit reimbursement requests that identify specific eligible costs incurred. After execution of the Financing Agreement, the Recipient will be expected to submit reimbursement requests in a timely manner to ensure the timely and expeditious use of CWSRF and complementary funds. Costs submitted to the Division must be currently due and payable, but the Recipient need not have actually paid the costs before requesting reimbursements. The Division will not disburse any funds until the Recipient adopts any required rate increase, assessment, surcharge, or other charge and demonstrates the rates, assessment, surcharge, or other charge, were adopted in accordance with the legal requirements the Recipient is subject to for the setting of rates, assessments or other charges to customers. (Publicly owned water and wastewater systems are generally subject to Proposition 218 requirements. See Cal. Const., arts. XIII C and XIII D; Gov. Code, § 53750 et seq.)
2. The Division will send the Recipient a copy of the required reimbursement forms with the executed Financing Agreement. *Appendix F* contains specific instructions for requesting disbursements. Upon approval of a reimbursement request, the Division will send the Recipient a copy of the approved

reimbursement request form, indicating the total amount approved for disbursement.

3. The Recipient must ensure that adequate local funding is available to pay any and all Project or planning/design work related costs in the event the reimbursement is not received by the Recipient before payment is due.
4. In limited circumstances, principal, interest and fees on Bridge Financing may be eligible for reimbursement. Applicants should contact the Division with the terms of the Bridge Financing to request approval prior to securing such financing in the form of a bridge loan, line of credit, or any other external source of interim financing.
5. Costs incurred prior to execution of a Financing Agreement are not guaranteed to be approved, nor is an agreement guaranteed to be executed.
6. The Division will base disbursement on the eligible amount currently due and payable for Eligible Project Costs, minus any amounts previously disbursed by the Division.
7. The Recipient must certify that work has been completed and that Eligible Project Costs were incurred. The Recipient must submit invoices or other documentation acceptable to the Division to substantiate the reimbursement of costs. Ineligible or questioned costs may result in a lesser amount approved for disbursement or a suspension of disbursement(s).
8. The Recipient must inform DFA of any project related disputes that may affect compliance with the Financing Agreement. Neither the U.S. EPA nor the State Water Board will participate in resolving bid disputes, or any other dispute, between the Recipient and any other party. The Recipient will have sole responsibility to resolve all bid or contractual disputes. The Division may withhold disbursement of funds until all bid and/or contract disputes have been resolved to the Division's satisfaction. The Recipients shall not seek reimbursement for costs associated with project related disputes, as such costs, i.e. legal expenses, penalties, administrative expenses, etc. are deemed ineligible for reimbursement.

B. Disbursements After Execution of the Financing Agreement

1. Allowances (Soft Costs), Material, and Equipment
 - a. The Division may disburse eligible Allowances (soft costs) incurred for the Project regardless of the date incurred after execution of the Financing Agreement, depending on rules associated with the funding sources for the Financing Agreement. Costs previously disbursed under a planning/design Financing Agreement are not eligible for reimbursement.
 - b. After execution of the Financing Agreement, the Division may disburse funds for eligible material and equipment purchased directly from the manufacturer or supplier and used in the project, in accordance with state and federal law.

2. Land Purchase

The Division will not disburse funds for land purchase costs incurred for the project prior to the Eligible Work Start Date of the Financing Agreement. After execution of the Financing Agreement, the Division may disburse eligible land purchase costs for the project.

3. Construction Costs

The Division will not disburse funds for construction costs incurred for the Project prior to the Eligible Construction Start Date of the Financing Agreement. After execution of the Financing Agreement, the Division may disburse eligible construction costs subject to the provisions of this Section.

C. Final Budget Form(s)

1. The Recipient must submit to the Division a complete and adequate final budget form(s), including all information requested by the Division. If a Project is separated into phases, the Recipient may submit a separate form for each phase, and the Division may provide approval of phases separately.
 - a. The Division may withhold disbursement of eligible construction costs if the Recipient submits an incomplete or inadequate final budget form. If the Division approves the final budget form, it may disburse project funds for eligible construction costs.
 - b. To minimize the risk that the Division withholds the disbursement of eligible construction costs, a recipient may request that the Division document its approval of the final budget form before requesting reimbursement of eligible construction costs.
2. The Division will review the final budget form to determine consistency with the executed Financing Agreement and compliance with applicable CWSRF Program requirements, including federal cross-cutters as applicable. The Division will also review the form to ensure that both the recipient and its consultants, contractors, or vendors have complied with the applicable requirements of this Policy, any conditions specified in the Financing Agreement, and that all permits, approvals, and financing necessary to complete the Project have been obtained.

D. Change Orders

The Recipient may use the Contingency amount in the Financing Agreement's budget, plus any funds remaining in the other cost categories in the Financing Agreement due to cost reductions, subject to any restrictions in the Financing Agreement, to pay for eligible Change Orders approved by the Division. The Division will review and approve Change Orders on a case-by-case basis.

E. Final Reimbursement

1. The Financing Agreement will establish a deadline for submittal of the Final Reimbursement Request. The complete Final Reimbursement Request must

be received by the Division by this date. Reimbursement requests received after the deadline for submitting the Final Reimbursement Request cannot be processed unless the date is extended through amendment of the agreement. The Final Reimbursement Request will not be processed until the Project Completion Report is submitted per Section XIII of this Policy.

2. Prompt submittal of the final reimbursement request is the responsibility of the Recipient. If the Division has not received the complete final reimbursement request, the Division may deobligate the undisbursed balance of the Financing Agreement.

XII. PROJECT CONSTRUCTION OR IMPLEMENTATION

A. Project Conference or Media Events

The Recipient shall notify the Division of any significant press or public media events (e.g. ground-breaking or ribbon-cutting) related to the Project with sufficient advance notice to allow Division staff to attend, but in any event, with at least ten (10) days' notice.

B. Inspections: Interim and Final

1. The Division may conduct interim inspections during construction or implementation.
2. The Division will conduct a final Project inspection.

C. Progress Reports

At least quarterly, the Recipient must submit progress reports on the status of project activities starting with the issuance of the executed Financing Agreement and ending on final reimbursement. The reports must contain at least the following information:

1. A summary of progress to date including a description of progress since the last report, percent complete, percent invoiced, and percent schedule elapsed;
2. A listing of Change Orders including amount, description of work, and change in contract amount and schedule;
3. Any problems encountered, proposed resolutions, schedule for resolutions and status of previous problem resolutions; and
4. A summary of compliance with environmental conditions, if applicable.

XIII. PROJECT COMPLETION REPORT

- A. The Recipient must notify the appropriate Regional Water Board and the Division that its Project was completed by submitting a Project Completion Report to the Division with a copy to the Regional Water Board. The Project Completion Report must be submitted on or before the due date established in the Financing Agreement. The Project Completion Report must describe the project, describe the

water quality problem the Project sought to address, discuss the Project's likelihood of successfully addressing that water quality problem in the future, and summarize compliance with environmental conditions, if applicable. Additional Project Completion elements may be required by the Division on a case-by-case basis.

- B. The State Water Board expects the Recipient to prepare and send a timely and complete report. The State Water Board may avail itself of any legal means to obtain this report. (See Water Code §13267.)

XIV. CONSTRUCTION/IMPLEMENTATION FINANCING PAYMENTS

- A. Interest and other charges, if applicable, will accrue on all disbursements as of the date of each disbursement. The Division will issue a revised payment schedule after approval of the final disbursement.
- B. Financing Agreements will be fully amortized no later than the earlier of thirty (30) years after Completion of Construction or the end of the Project's useful life. The amount to be paid will include the amount financed plus accrued interest, administration service, and SCG funding charges, if applicable.
- C. The Division will prepare a payment schedule that includes:
1. The interest rate, and, if applicable, an administrative service charge and SCG funding charge;
 2. Amount of CWSRF funding;
 3. The final principal amount of the Financing Agreement including accrued interest, administration service charge, and SCG funding charge, if applicable; and
 4. A complete amortization table.
- D. The Recipient must make its first annual payment not later than one year following the Completion of Construction date, as established in the originally executed Financing Agreement. The Division will generally not extend the initial repayment date, but shall have discretion to extend on a case-by-case basis, upon justification from the Recipient.
1. As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the payment due date, but prompt payment remains the responsibility of the Recipient.
 2. The Recipient will have a ten-day grace period, after which time the State Water Board will assess a penalty in the amount of costs incurred for lost interest earnings, staff time, bond default penalties, and other costs incurred or flowing from the late payment. Any penalties will be deposited in the CWSRF account. Penalties will not change the principal balance of the financing agreement and will be treated as a separate receivable in addition to the annual payment due.

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3. All payments are to be sent to:

CWSRF Accounting Office
State Water Resources Control
Board Attention: CWSRF Program
Post Office Box 1888
Sacramento, CA 95812-1888

E. Prepayments

Loan prepayments require the consent of the Deputy Director of the Division (see Section XII of the Clean Water and Drinking Water State Revolving Funds Debt Management Policy).

F. Loan Compliance and Monitoring

1. All Loan recipients must submit audited financials annually for at least the first 5 years of the repayment term and possibly for every year until full Loan repayment. Where the Loan has been pledged as security for the State Water Board's revenue bond debt, the Division will review audited financials every year until full Loan repayment.
2. Rate Stabilization Fund transfers may be viewed as supplemental revenue to System Revenues, for purposes of complying with the Debt Service Coverage requirement, on an occasional basis, during the repayment term and may require notice.
3. Where SRF revenue bond proceeds funded any portion of a Loan, the Division will review tax compliance on that Loan annually.

XV. RECORD KEEPING REQUIREMENTS

- A. The Recipient must maintain separate accounts in accordance with applicable federal requirements as specified in the Financing Agreement. (See 2 CFR, Part 200, Subpart F). In most cases, the records retention period will be thirty-six (36) years.
- B. Recipients shall maintain accounts according to generally accepted accounting principles (GAAP), the uniform accounting and reporting procedures set forth in publications of the American Institute of Certified Public Accountants or its successor, or by any other generally accepted authority on such procedures, and includes, as applicable, the standards set forth by the Governmental Accounting Standards Board or its successor.

XVI. BOARD RESERVATION OF AUTHORITY

- A. Prior to approving any financing, the State Water Board reserves the right to modify this CWSRF Policy as necessary to provide for effective and equitable use of CWSRF funds, including:
 1. Reducing the eligible funding amount for cause;

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2. Conforming to applicable state and federal laws, rules, regulations, or agreements, including but not limited to the Operating Agreement, the Capitalization Grant Agreement, and agreements related to any CWSRF revenue bonds.
- B. The Deputy Director of the Division may update and amend the CWSRF Policy Appendices and create new Appendices as necessary for administrative or procedural changes not in conflict with this Policy, except that certain activities require Executive Director approval as stated in this Policy.
 - C. Throughout this document, the Executive Director and Deputy Director have been authorized to perform actions. The Executive Director and Deputy Director are also authorized to re-delegate any of those actions to a designee.
 - D. Throughout this document, the Division has been designated to perform certain actions. In general, this refers to actions or decisions by the Deputy Director of the Division or staff assigned those responsibilities by the Deputy Director of the Division.

XVII. DISPUTES

- A. Approvals or actions taken by the Division's predecessors pursuant to statutes, regulations, and policies in effect at the time of the approvals or actions remain valid. Division approvals or actions after the effective date of this Policy that conflict with or are inconsistent with approvals or actions taken by the Division's predecessors will be resolved by the Deputy Director of the Division.
- B. Division approvals or actions taken under previous versions of this Policy remain valid. Division approvals or actions after the effective date of this Policy amendment that conflict with or are inconsistent with approvals or actions taken under previous versions of this Policy will be resolved by the Deputy Director of the Division.
- C. An applicant or recipient may appeal a staff decision within 30 days to the Deputy Director of the Division for a final Division decision. An applicant or recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.
- D. Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.