

Frequently Asked Questions (FAQ)
Clean Water State Revolving Fund (CWSRF) Program
Legal Opinion Requirements

Applicants should have their legal counsel review these FAQs prior to submitting an application for CWSRF financing.

1. Why has the State Water Board's Division of Financial Assistance (Division) changed its approach regarding the submittal and approval of legal opinions for CWSRF applications?

The Division wishes to provide CWSRF applicants with a streamlined process for addressing these requirements. The new process will also help the Division ensure that the legal information we receive from applicants is as up-to-date as possible.

2. In general, how has the Division changed its approach?

Rather than asking applicants to have their local counsel draft individual legal opinion(s) for submittal with the application package, the Division's legal counsel will coordinate directly with the applicant's legal counsel prior to execution of the CWSRF financing agreement. At that time, Division counsel will provide the applicant's legal counsel with the proposed form of CWSRF agreement and form of opinion. The applicant's legal counsel will review the documents, and discuss changes with Division counsel if needed. Later, the applicant's legal counsel will sign and return the finalized opinion with the signed CWSRF financing agreement.

3. When should applicants expect to be contacted by the Division's legal counsel?

Your CWSRF Project Manager will coordinate with Division counsel to ensure that your counsel is contacted at the appropriate time, typically at least eight weeks prior to execution of the financing agreement. However, if there are any obvious complicating factors your local counsel may be contacted earlier in the process.

4. For construction financing, what issues will need to be addressed in the required legal opinion?

For construction financing applications, the legal opinion confirms the following:

- The validity of the CWSRF financing agreement and the supporting resolutions
- No conflicts with applicable laws and material obligations
- No untrue, misleading, or incomplete representations
- No pending or existing litigation or disputes, including rate payer disputes
- The applicant has necessary property rights in place

In addition, where the applicant has related existing bond debt (i.e., with the same pledged revenues or funds), an opinion from bond counsel will be required.

5. What about planning or design financing applications?

The required legal opinion will address the same items outlined above, except the issue of property rights.

6. Is a bond counsel opinion required for planning or design grant applications?

Eligible small disadvantaged communities applying for a planning or design grant are not required to provide a bond counsel opinion (even if there is related existing debt).

7. What are common legal complications that applicants encounter:

- **Regarding litigation or disputes?**

Any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) that may detrimentally affect the applicant's:

- Existence
- Payment source
- Legal authority to use the proposed pledged revenues or funds
- Legal authority to enter into the proposed CWSRF financing agreement
- Ability to meet its obligations under the CWSRF financing agreement.

- **Regarding property rights?**

- Any conditions (on leases, easements, or other agreements) that might affect the applicant's ability to access, construct, operate, maintain, and allow for outside inspections of the project throughout the useful life of the CWSRF financing agreement.
- Cases where there is inadequate title documentation and action is needed to ascertain ownership.

- **Regarding the pledged revenues or funds?**

Issues that might affect the ability of the applicant's legal counsel to certify that the use of the pledged revenues or funds, as described in the CWSRF financing agreement, would constitute a legal, valid, and binding use.

- Proposition 218 compliance
- Necessary resolutions

- **Regarding existing debt?**

Conditions, restrictions, or conflicts that prohibit the applicant from agreeing to or meeting its obligations under the CWSRF financing agreement. For example:

- Consent requirements
- Coverage/coverage requirements
- Closed indenture
- Other material conditions

If you anticipate any issues with providing the required information, please discuss with your CWSRF Project Manager. A discussion directly with the Division's legal counsel can be arranged as needed.