

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2011-0044**

ADOPTION OF A CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM  
PRELIMINARY FUNDING COMMITMENT (PFC) FOR THE CITY OF COLFAX (CITY),  
COLLECTION SYSTEM INFILTRATION AND INFLOW (I&I) REPAIR/REPLACEMENT AND  
WASTEWATER TREATMENT PLANT (WWTP) RESERVOIR POND LINING PROJECT  
(PROJECT), CWSRF PROJECT NO. C-06-7806-110, AND RESTRUCTURE AND REFINANCE  
EXISTING CWSRF AND UNITED STATES DEPARTMENT OF AGRICULTURE (USDA)  
WASTEWATER DEBT OBLIGATIONS

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted the *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities*, (Policy) and amended it on March 17, 2009;
2. The State Water Board, on June 15, 2010, adopted the CWSRF Program 2010/2011 Project Priority List (PPL), and the Executive Director amended the 2010/2011 PPL on April 12, 2011, which included the City's Project;
3. The CWSRF Amended Intended Use Plan for State Fiscal Year 2010/2011, adopted by the State Water Board on May 17, 2011, \$98,770,482 in principal forgiveness/grants is available to disadvantaged communities;
4. The Division of Financial Assistance (Division) issued the Facility Plan Approval (FPA) for the City's Project, and the City agreed with the content and conditions of the FPA;
5. As a small (less than 20,000 persons) disadvantaged community (median household income [MHI] less than 80 percent of the statewide MHI) with wastewater user rates more than 1.5 percent of the community's MHI, the City may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness.
6. With an estimated eligible cost of \$6,638,000, the Project qualifies for \$3,319,000 in principal forgiveness. The City is also slated to receive \$1,000,000 in grant funds from the United States Department of Agriculture (USDA) and \$573,400 in grant funds from the United States Environmental Protection Agency. The City is requesting CWSRF financing for the remainder of Project costs (\$1,745,600);
7. The City filed two Notices of Exemption (State Clearinghouse Nos. 2009048078 and 2009048079) for I&I mitigation and pump stations SCADA components of the Project with the Placer County Clerk on March 30, 2009, and with the Governor's Office of Planning and Research on April 7, 2009;
8. The I&I mitigation and pump stations SCADA components of the Project qualify for Section 15301 (Class 1) and 15302 (Class 2) categorical exemptions from the California Environmental Quality Act;

9. The Pond 3 liner component of the Project was previously approved for CWSRF funding in 2007, as part of the City's WWTP Improvement Project (Project No. C-06-4770-110);
10. The City prepared a Draft Environmental Impact Report (EIR) dated July 16, 2004, and circulated it through the State Clearinghouse for review from July 19, 2004, through September 1, 2004. The City Council adopted and certified the final EIR (SCH#2003122075) on October 13, 2004. The City filed a Notice of Determination with the Placer County Clerk and with OPR on October 13, 2004;
11. Updated environmental documentation was reviewed and found to be consistent with the 2004 EIR;
12. The Project will not result in significant adverse water quality impacts;
13. The City is required to comply with the conditions of a settlement agreement between the City, and a downstream property owner and the Environmental Law Foundation (Plaintiffs), which was adopted by the United States District Court, Eastern District of California in January 2009. A subsequent order for compliance with the settlement agreement was approved in October 2010;
14. Due to heavy rains in winter and spring of 2011, the City attempted to prevent an uncontrolled overflow by diverting water from Pond 3 through the old WWTP. In accordance with the settlement agreement, the City is obligated to pay a \$50,000 stipulated penalty to the Plaintiffs for the emergency discharge from Pond 3. The Plaintiff's attorneys have also asked the court to award attorneys' fees;
15. Settlements and legal fees affect the City's ability to make payments on their existing CWSRF financing agreement (CWSRF Project No. C-06-4770-110);
16. A credit review was completed on June 28, 2011, recommending:
  - a. A maximum financing amount of \$12,825,600. This includes \$5,064,600 for the Project and \$7,761,000 to refinance and restructure existing wastewater debts, including the City's existing CWSRF financing agreement and the City's 1978 USDA Sewer Revenue Bond;
  - b. An extended term, ending in October 2038 (the end date of the City's existing CWSRF financing agreement), with a reduced interest rate estimated at one percent, and \$3,319,000 in principal forgiveness; and
  - c. Until completion of construction of the Project, the City shall pay the interest on the outstanding debt (due October 1<sup>st</sup> of each year). Upon completion of construction, the balance of the new and refinanced debts will be amortized.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Approves a CWSRF PFC of \$12,825,600 for the City's Project with an extended term ending in October 2038, a reduced interest rate of one percent, and an estimated \$3,319,000 in principal forgiveness.

2. Directs Division staff to allocate \$12,825,600 consistent with the construction schedule and availability of funds.
3. Conditions this approval by withdrawing the CWSRF PFC if the City does not sign the CWSRF financing agreement by December 30, 2011. In accordance with Section IX.K.3 of the Policy, the Deputy Director of the Division (or designee) may approve up to a 120-day extension for good cause.
4. Conditions this approval to require the City to provide immediate notification to the State Water Board Project Manager if the ongoing litigation will jeopardize the City's ability to repay the CWSRF financing, and provide the State Water Board Project Manager with a copy of any new settlement agreements or revised court rulings within 15 days of such event.
5. Conditions the financing agreement, as determined by the City's credit review, with the following items:
  - a. The City shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times the total annual debt service;
  - b. The City may not incur future senior debt. The City's future debt may be parity with CWSRF debt if Policy conditions are met (Section X.G1);
  - c. The City shall establish a Reserve Fund in an amount equal to one year's debt service by Completion of Construction of the Project;
  - d. City shall pay the interest on the outstanding debt (due October 1<sup>st</sup> of each year) until the Project Completion of Construction date. After Completion of Construction (estimated fiscal year 2012/13 or later) the balance, plus the additional new funding, will be amortized over the extended term ending in October 2038;
  - e. The financing agreement shall be limited to the maximum amount of \$12,825,600 (with an interest rate of one percent and an estimated \$3,319,000 in principal forgiveness) unless new information supporting the credit review changes and a supplemental credit review is performed;
  - f. The existing CWSRF financing agreement and the existing USDA Bond will be restructured and refinanced into the proposed financing agreement, unless the Division determines the proposed payoff/refinance of the City's existing USDA Bond to be technically, legally, or otherwise infeasible. If payoff/refinance of the existing Bond is infeasible:
    - i. Consistent with provisions in the existing USDA Bond, the City shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.20 times the total annual debt service; and

- ii. The funds allotted for payoff/refinance of the USDA Bond (estimated at \$36,000) will be excluded from the financing agreement, and the financing amount reduced accordingly.

**CERTIFICATION**


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on September 19, 2011.

AYE: Chairman Charles R. Hoppin  
Vice Chair Frances Spivy-Weber  
Board Member Tam M. Doduc

NAY: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
Jeanine Townsend  
Clerk to the Board