

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
APRIL 21, 2005

ITEM 4

SUBJECT

WAIVER OF THE SEAWATER INTRUSION CONTROL (SWIC) PROGRAM GUIDELINES FOR THE ORANGE COUNTY WATER DISTRICT (DISTRICT) GROUNDWATER REPLENISHMENT SYSTEM (PROJECT); SWIC PROJECT NOS. 3021-110 AND 3021-120

DISCUSSION

On March 7, 2000, the voters approved Proposition 13, the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (2000 Bond Law). The 2000 Bond Law authorized \$25 million for the 2000 SWIC Subaccount for the State Water Resources Control Board (State Water Board) to provide loans for design and construction of seawater intrusion control projects. The 2000 Bond Law also directed unallocated funds and loan repayments from the SWIC Program created by the 1996 Bond Law to be transferred and deposited into the 2000 SWIC Subaccount. The *Seawater Intrusion Control Program Guidelines* (Guidelines) were adopted by the State Water Board in Resolution No. 97-097. In accordance with the Guidelines, loan funds are available on a first-come-first-served basis, and SWIC projects need the Water Board's approval to receive a SWIC loan. SWIC loans can be approved by the State Water Board after the Division of Financial Assistance (Division) has issued a Facilities Plan Approval letter.

The District's project is a multi-faceted, multi-year project that will be funded by several different sources. The Division will also issue multiple loan and grant contracts so that the funding provided by the Division is more administratively manageable. The District has applied for SWIC loan funds, State Revolving Fund (SRF) loan funds, and Water Recycling Construction Program grant funds. The District has received a preliminary loan commitment of \$14.83 million from the SWIC Program by State Water Board Resolution No. 2002-0055 and a preliminary loan commitment of \$152.2 million from the SRF by Resolution No. 2002-0117 under the *SRF Program Policy* (Policy).

A waiver of the SWIC Guidelines is necessary because the SWIC Guidelines and SRF Policy have contradictory requirements. The SWIC Guidelines state in Section VIII that construction costs incurred prior to the date of the loan contract are ineligible. The SRF Policy in Section VI, however, allows retroactive funding for projects if applicants have all required approvals before initiation of construction, but due to a lack of funds or other reasons, the Division is not able to issue a loan contract prior to initiation of construction.

The Division issued the necessary approvals for the District's SWIC Projects prior to initiation of construction consistent with the SRF Policy. Final Plan & Specifications (P & S) for Temporary Microfiltration/Site Power, SWIC Project No. 3021-110, was issued on March 27, 2003; initiation of construction began on May 22, 2003. Final P&S for Advanced Water Treatment Facility, SWIC Project No. 3021-120, was issued on March 24, 2004; initiation of construction began on June 11, 2004. The

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Division was unable to execute SWIC loan contracts for these projects prior to initiation of construction resulting in the construction costs being ineligible for funding under the SWIC Guidelines.

The Division is asking the State Water Board to waive the SWIC Program Guideline in Section VIII to allow construction costs incurred by the District after approval of final P&S, but prior to execution of the loan contract, to be eligible for SWIC loan funding. This waiver would make eligibility determinations under the SWIC Guidelines consistent with the SRF Policy.

POLICY ISSUE

Should the State Water Board approve a waiver of the SWIC Guidelines (Section VIII) for the District's Projects, allowing the District to receive SWIC funding, consistent with the SRF Policy, for construction costs incurred after Division approval of final P&S but prior to execution of a loan contract?

RWQCB IMPACT

None

FISCAL IMPACT

None

STAFF RECOMMENDATION

That the State Water Board approve a waiver of the SWIC Program Guidelines (Section VIII) for the District's Projects, allowing the District to receive SWIC funding, consistent with the SRF Policy, for construction costs incurred after Division approval of final P&S but prior to execution of a loan contract.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-

WAIVER OF THE SEAWATER INTRUSION CONTROL (SWIC) PROGRAM GUIDELINES
FOR THE ORANGE COUNTY WATER DISTRICT (DISTRICT), GROUNDWATER
REPLENISHMENT SYSTEM (PROJECT), SWIC PROJECT NOS. 3021-110 AND 3021-120

WHEREAS:

1. The State Water Resources Control Board (State Water Board), on October 23, 1997, adopted Resolution No. 97-097 which included adoption of *Seawater Intrusion Control Loan Program Guidelines* (SWIC Guidelines) which made funds available on a first-come-first-served basis;
2. A loan application was submitted by the District requesting funding for the Project;
3. The District has received a preliminary loan commitment of \$14.83 million from the SWIC Program by State Water Board Resolution No. 2002-0055;
4. The District has received a preliminary loan commitment of \$152.2 million from the State Revolving Fund (SRF) consistent with *SRF Program Policy* (SRF Policy) by Resolution No. 2002-0117;
5. Section VIII of the SWIC Guidelines and Section VI of the SRF Policy have contradictory requirements. Section VIII of the SWIC Guidelines states that construction costs incurred prior to the date of the loan contract are ineligible. Section VI of the SRF Policy, however, allows retroactive funding if applicants have the required approvals prior to initiation of construction, but the Division is unable to issue a loan contract prior to initiation of construction;
6. The Division issued the required approvals for the District's SWIC Projects prior to initiation of construction consistent with the SRF Policy, but was unable to execute SWIC contracts prior to initiation of construction resulting in those construction costs being ineligible for funding under the SWIC Program; and
7. Waiving Section VIII of the SWIC Guidelines would make eligibility determinations for the District's SWIC projects consistent with the eligibility determination requirements in the SRF Policy.

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board approves a waiver of the SWIC Guidelines (Section VIII) that will allow the District's Project to receive SWIC funding, consistent with the SRF Policy, for construction costs incurred after Division approval of final Plans & Specification but prior to execution of a SWIC loan contract.

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 April 21, 2005.

Debbie Irvin
Clerk to the Board