

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION - DIVISION OF FINANCIAL ASSISTANCE
SEPTEMBER 19, 2011**

ITEM 12

SUBJECT

CONSIDERATION OF A RESOLUTION ADOPTING 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

DISCUSSION

In accordance with the State Water Resources Control Board's (State Water Board) *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy), amended on March 17, 2009, projects on the adopted priority list need State Water Board approval to receive CWSRF funding. The State Water Board may approve a CWSRF PFC after issuance of a project Facility Plan Approval (FPA). The Division of Financial Assistance (Division) issued the FPA for the City's Project, and the City agreed with the content and conditions of the FPA. The Project is listed on the Amended State Fiscal Year (SFY) 2010/2011 CWSRF Program Project Priority List in Priority Class C. The Project is also included in the Amended CWSRF Program *Intended Use Plan* (IUP) for SFY 2010/2011.

In accordance with Section IX.K of the Policy, a PFC may be approved by the Deputy Director of the Division if the Project is routine and non-controversial. The Project is considered non-routine and controversial due to: 1) litigation against the City, and 2) the City's fiscal issues and cash flow problems; therefore, the PFC must be presented to the State Water Board for consideration.

PROJECT INFORMATION

The City is located in Placer County within the foothills of the Sierra Nevada, about 49 miles northeast of Sacramento. The City's recently-constructed WWTP consists of extended aeration, filtration, and ultraviolet disinfection. The WWTP discharges tertiary-treated effluent to an unnamed tributary to Smuthers Ravine, a tributary to the North Fork of the American River. The City is seeking CWSRF funding for wastewater collection system inflow and infiltration (I&I) mitigation and repairs, connection of supervisory control and data acquisition (SCADA) systems to improve pump station reliability, and lining of the WWTP storage reservoir pond (Pond 3). The following are separate, more detailed discussions of these components.

Collection System, I&I Mitigation

The Project will help the City eliminate or reduce wastewater collection system I&I to comply with the provisions of Cease and Desist Order (CDO) No. R5-2010-0001, issued by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) in January 2010. The City recently completed a large I&I reduction and pump station upgrade project (CWSRF Project No. C-06-5385-110) to address the most critical I&I problems, but additional collection

system rehabilitation is needed to fully address I&I. It is estimated that 10,182 linear feet of the collection system and 100 manholes will be rehabilitated as part of this Project.

Pump Stations, SCADA

The City's four pump stations were recently upgraded and pre-equipped with SCADA systems, however those systems must be linked to a master control and acquisition computer with real-time communication. The Project will connect the pump stations to a master computer at the City's WWTP. Remote access to each pump station will be available through the master computer.

Pond 3 Liner

The City's WWTP includes an unlined 69 million gallon (MG) storage reservoir, Pond 3, which is used to store partially treated wastewater during storm events and periods of high I&I. Pond 3 is approximately 9.7 acres in plan area and is located along the southern portion of the WWTP facility. Pond 3 consists of an earth fill dam, spillway, outlet piping, and overflow alarm level device. Pond 3 is designed to hold 69 MG of water at the spillway crest level, but the City's most current Waste Discharge Requirements (WDR) Order No. R5-2007-0130 (National Pollutant Discharge Elimination System Permit No. CA0079529) prohibits water levels higher than 2 feet below the spillway, effectively reducing the storage volume to approximately 64 MG. Pond 3 is within an area of several natural springs. Groundwater and wastewater from other ponds seep into Pond 3. Seepage at the dam is collected and returned to the storage reservoir, but there is concern that seepage at other locations may occur, bypassing the seepage collection system with the potential for discharges of partially-treated wastewater. The CDO requires the City to complete the Pond 3 lining project in order to cease wastewater seepage discharges.

In February 2009, the City completed upgrades to the WWTP, as part of CWSRF Project No. C-06-4470-110, bringing treatment to a tertiary level. During planning and design of the WWTP upgrade project, it was anticipated that the Pond 3 liner would be constructed as part of that project in a subsequent phase. However, due to funding constraints and the City's inability to dewater Pond 3 during construction of the WWTP, the Pond 3 liner project was suspended to complete further studies and secure additional funding. The City is working with the Central Valley Water Board on options for dewatering the Pond 3 storage reservoir. In a letter dated July 11, 2011, the Central Valley Water Board expressed the opinion that implementation of increased evaporation by sprinkler or evaporation system would comply with the City's WDR. The letter also outlined conditions to be implemented during the dewatering process.

The City's preliminary design report recommended lining the pond with a pre-fabricated high density polyethylene (HDPE) liner or Hypalon geomembrane. The City plans to install the HDPE liner option.

ENVIRONMENTAL IMPACT

State Water Board staff reviewed the environmental impact of the Pond 3 liner as part of the City's previous WWTP Improvement Project (CWSRF C-06-4770-110). As a result, the environmental impact of the Project is addressed in two parts: 1) I&I mitigation and pump stations SCADA components; and 2) Pond 3 liner component.

State Water Board staff conducted a Tier II environmental review, reviewed the environmental documents and determined that I&I mitigation and pump stations SCADA components of the Project will not result in any significant adverse water quality impacts.

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 (OPR) on April 7, 2009. State Water Board staff concurred that the I&I mitigation and pump stations SCADA components of the Project qualify for a Class 2 categorical exemption from the California Environmental Quality Act (CEQA Section 15302) for replacement or reconstruction of existing structures and facilities. State Water Board staff found that the I&I mitigation and pump stations SCADA components of the Project also qualify for a Class 1 categorical exemption from CEQA for maintenance, repair, and minor alteration to existing facilities (CEQA Guidelines, Section 15301).

State Water Board Staff conducted a Tier I review for the City's WWTP Improvement Project (CWSRF C-06-4770-110), which included the Pond 3 liner component of the Project, reviewed the environmental documents and determined that the Pond 3 liner component of the Project will not result in any significant adverse water quality impacts. 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. In December 2010, the City updated environmental documentation for the Pond 3 liner component of the Project. State Water Board staff reviewed the additional documentation and has determined that there will be no additional environmental impacts not addressed in the 2004 EIR. Public notice of the updated environmental review will be accomplished through the State Water Board hearing process.

The State Water Board will impose no special environmental conditions for the Project.

FISCAL IMPACT

Principal Forgiveness Analysis

As outlined in the Amended CWSRF IUP for SFY 2010/2011, adopted by the State Water Board on May 17, 2011, \$98,770,482 in FFY 2010 and FFY 2011 principal forgiveness/grants is available to two categories of communities: 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and 2) Other Communities.

The City qualifies for principal forgiveness under Category 1. The City's estimated 2010 population is 1,542 persons, with an estimated 2010 median household income (MHI) of \$48,752. As of July 2011, the City's wastewater rates are \$105.40/month (2.5 percent of the community's MHI). As a small disadvantaged community 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. With an estimated eligible cost of \$6,638,000, the Project qualifies for \$3,319,000 in principal forgiveness.

Litigation and Settlements

The City's Project is necessary to comply with the WDR and CDO issued by the Central Valley Water Board. The Project is also necessary to comply with the conditions of a settlement agreement between the City and a downstream property owner and the Environmental Law Foundation (Plaintiffs). The settlement agreement was approved by the United States District Court, Eastern District of California in January 2009, and a subsequent order for compliance with the settlement agreement was approved in October 2010. The settlement agreement places conditions and requirements on the City, including implementation of this Project.

Due to heavy rains in winter/spring 2011, the City attempted to prevent an uncontrolled overflow of the dam at Pond 3 by diverting water from Pond 3 through the old interim WWTP. The City notified the Central Valley Water Board of this plan prior to diverting Pond 3 flows to the interim WWTP. In a letter dated March 18, 2011, the Central Valley Water Board acknowledged that the status of Pond 3 presented an emergency situation, and advised the City that they should take all possible steps to mitigate water quality impacts from a spill. The emergency discharge occurred March 20, 2011, through April 8, 2011. 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.

Fiscal Impact on Applicant's Finances

In order to improve water quality and make the City's current and future financing affordable, it is recommended that the City's existing CWSRF debt for the WWTP project (No. C-06-4470-110) be refinanced as part of the proposed financing agreement for this Project (No. C-06-7806-110). It is also recommended that the proposed financing agreement be extended with a reduced interest rate.

A credit review analyzed the City's ability to enter into a financing agreement for the amount of \$12,825,600, of which \$5,064,600 is for construction and allowance costs for the Project; \$7,725,000 will refinance the City's current debt for Project No. C-06-4470-110; and \$36,000 will pay off/refinance the City's debt for a wastewater project constructed with 1978 USDA Sewer Revenue Bond funds. The City is also scheduled to receive \$1,000,000 in grant funds from the USDA and \$573,400 in grant funds from the United States Environmental Protection Agency, to make up the total Project cost estimate of \$6,638,000. The credit review provided recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity, and reserve fund requirements for the financing agreement.

The most recent sewer rate increases were approved in October 2008. The current monthly sewer rate for residential connections is \$105.40, effective July 1, 2011. Rates will increase to \$108.66 per month on July 1, 2012.

The City has two outstanding debts secured by the Sewer Enterprise Fund: 1) CWSRF project No. C-06-4470-110 with a current balance of \$7,357,496 and debt service of \$372,316; and 2) the 1978 USDA Sewer Revenue Bond project with a current balance of \$35,000 and annual debt service of \$4,975. The City has requested that both of these debts be refinanced into the proposed financing agreement.

The City's existing CWSRF Project No. C-06-4470-110 has an extended 30-year financing term. USEPA staff has indicated that if the existing CWSRF financing agreement is restructured, the City must repay the new CWSRF financing agreement by the existing term end date, in October 2038. The balance to refinance is estimated at \$7,725,000 including principal and interest.

The 1978 USDA Sewer Revenue Bond funds were used for the 1978 Wastewater Treatment Project, which consisted of collection and treatment system improvements. Gross revenues of the Sewer Enterprise Fund were pledged to the repayment of the 1978 USDA bond issue. The current balance is \$35,000, with a payoff balance estimated at \$36,000.

In addition, the City has two legal settlements to be paid from the Sewer Enterprise Fund; Legal Settlement 2010 for \$433,024, which will be paid in four payments of \$108,256 beginning in fiscal year 2010/11; and Legal Settlement 2009 for \$226,601, which will likely be paid in fiscal year 2011/12.

Security and Source of Financing Repayment

The City shall dedicate the net revenues of the Sewer Enterprise Fund (after deducting operations and maintenance and legal settlement costs) to the repayment of the proposed financing agreement.

It is estimated that \$300,000 to \$400,000 will be expended from the City’s 2011/2012 budget for additional court costs, increased legal settlement costs, and additional manpower costs associated with the preventative measures implemented at Pond 3 in April 2011. As a result, the City will not be able to begin regular debt service payments until fiscal year 2012/2013. The City has agreed to make interest-only payments during construction of the Project.

A financing amount of \$12,825,600, with \$3,319,000 in principal forgiveness, repaid over an estimated 22 years, with an estimated interest rate of one percent, will result in a debt service payment of \$483,541. When added to the \$108,256 due per Legal Settlement 2010, the result is a total debt service payment of \$591,797 for fiscal year 2012/13. When projected net revenues are compared to total debt service, the resulting debt service coverage ratio is 1.38. Beginning in fiscal year 2014/15, when all existing legal settlements are paid in full and assuming there is no new City debt, and with the City’s annual debt service to the CWSRF Program estimated to be \$483,541, the City’s projected debt service coverage ratio increases to approximately 1.7. This exceeds the CWSRF Policy requirement that net revenues be at least 1.10 times total debt service.

Comparative Revenues and Expense Analysis

The revenues and expenses for the Sewer Enterprise Fund for fiscal year 2009/10, budgeted for fiscal years 2010/11 and 2011/12, and projected for fiscal year 2012/13, are summarized below:

| Fiscal Year | 2009/10 | 2010/11 Budget | 2011/12 Budget | 2012/13 Projections |
|--|----------------------------|----------------------------|--------------------------|--------------------------|
| Service Charges | \$1,492,190 | \$1,044,369 ⁽²⁾ | \$1,555,577 | \$1,576,266 |
| Miscellaneous | \$19,672 | \$0 | \$0 | \$0 |
| Connection Fees | \$0 | \$185,000 | \$191,000 | \$196,700 |
| Interest Income | (\$3,748) | \$12,400 | \$12,400 | \$12,400 |
| Total Revenue | \$1,508,114 | \$1,241,769 | \$1,758,977 | \$1,785,366 |
| Operating Expenses | \$1,975,157 ⁽¹⁾ | \$914,338 | \$941,058 ⁽³⁾ | \$969,290 |
| Net Available for Debt Service | (\$467,043) ⁽²⁾ | \$327,431 | \$817,919 | \$816,076 |
| Existing Debt Service | \$377,291 | \$377,291 | \$377,291 | \$0 ⁽⁶⁾ |
| Proposed Debt Service | | | | \$483,541 ⁽⁵⁾ |
| Legal Settlement 2009 | \$0 | \$0 | \$226,601 | \$0 |
| Legal Settlement 2010 ⁽⁴⁾ | \$0 | \$108,256 | \$108,256 | \$108,256 |
| Total Debt Service/ Legal Settlements | \$4,975 | \$485,547 | \$712,148 | \$591,797 |
| Debt Service Coverage Ratio | 0.00 | 0.67 | 1.15 | 1.38 ^(5, 6) |

(1) 2009/10 operating expenses were high due to legal settlements requiring payment of \$959,625 in legal fees.

(2) 2010/11 service charges are down due to negative balance at year end 2009/10 carried over to 2010/11, resulting in the inability to pay a full debt service payment on CWSRF Project No. C-06-4470-110 in October 2010.

(3) Due to April 2011 pond overflow, the City estimates an additional \$300,000 to \$400,000 in court costs, settlement costs, and manpower costs. The City anticipates an inability to pay a full payment on CWSRF Project No. C-06-4470-110 in October 2011.

(4) The 2010 Legal Settlement has four annual payments of \$108,256 from fiscal year 2010/11 through 2013/14.

(5) Due to the City's ongoing court and settlement costs, it is recommended that full payments on the proposed CWSRF financing agreement be deferred until after completion of construction (anticipated fiscal year 2012/13 or later). With the current construction completion date in May 2013, the full payments would extend over an estimated 24 years. The estimated debt service of \$483,998 is based on a conservatively estimated full repayment period of 22 years (should construction completion be delayed). Repayment over 24 years would reduce the annual CWSRF payment and improve the City's debt coverage ratio.

(6) The City's existing Bond includes a provision requiring the City to maintain a debt coverage ratio of 1.2. If the proposed payoff/refinance of the City's existing Bond does not occur due to a determination that it is technically, legally, or otherwise infeasible, the City's projected revenues will be sufficient to meet the required debt coverage ratio of 1.2.

The proposed Resolution requires the City to establish a reserve fund equal to one year's debt service from available cash. A reserve fund in the amount of one year's debt service is maintained so that in the event of non-payment, there are funds available to make the payment.

Fiscal Impact on the CWSRF Program

| As of 08/29/2011 | SFY 2011-12 | SFY 2012-13 | SFY 2013-14 | SFY 2014-15 | SFY 2015-16 |
|--|--------------------------------|-----------------------|----------------------|----------------------|----------------------|
| Beginning Balance: | \$432,604,699 | \$69,502,120 | (\$21,475,361) | (\$7,417,255) | \$116,445,193 |
| Estimated Repayments | \$229,901,246 | \$239,901,246 | \$249,901,246 | \$259,901,246 | \$269,901,246 |
| Debt Service on Revenue Bonds | (\$30,228,204) | (\$27,714,204) | (\$23,821,829) | (\$20,966,279) | (\$19,356,506) |
| Estimated Capitalization Grants | \$68,764,114 | \$32,087,000 | \$28,800,000 | \$28,800,000 | \$28,800,000 |
| Local Match Credits | \$3,408,579 | \$2,540,051 | \$916,685 | \$958,353 | \$1,083,355 |
| Est. SMIF Interest: | \$1,500,000 | \$1,500,000 | \$1,500,000 | \$1,500,000 | \$1,500,000 |
| Estimated Disbursements | (\$579,932,253) | (\$291,518,079) | (\$208,237,997) | (\$116,330,871) | (\$35,215,352) |
| Subtotal | \$126,018,180 | \$26,298,134 | \$27,582,745 | \$146,445,193 | \$363,157,937 |
| Pending Preliminary Funding Commitments | Estimated Disbursements | | | | |
| City of Modesto, #5175-210 (06/06/2011) | (\$32,000,000) | (\$20,000,000) | (\$35,000,000) | (\$30,000,000) | (\$10,000,000) |
| Calaveras County Water District, #5249-110 (05/18/2011) | (\$2,210,440) | | | | |
| Heber Public Utility District, #5302-110 (04/28/2011) | (\$2,620,500) | (\$2,600,000) | | | |
| City of Lathrop, #5599-110 (02/01/2011) | (\$1,000,000) | | | | |
| City of Turlock, #5602-110 (08/25/2011) | (\$5,000,000) | (\$15,000,000) | | | |
| City of Vista, #5921-110 (06/15/2011, 07/22/2011) | (\$3,878,370) | | | | |
| City of East Palo Alto, #5956-110 (06/06/2011) | (\$1,423,750) | | | | |
| City of Stockton, #7085-110 (03/30/2011) | (\$1,625,000) | | | | |
| City of Rio Dell, #7401-110 (05/18/2011, 08/25/2011) | (\$500,000) | (\$6,924,895) | | | |
| City of Colfax, #7806-110 (07/22/2011, 08/25/2011) | (\$6,258,000) | (\$3,248,600) | | | |
| Ending Balance on June 30 | \$69,502,120 | (\$21,475,361) | (\$7,417,255) | \$116,445,193 | \$353,157,937 |
| Notes: | | | | | |
| <ul style="list-style-type: none"> • The State Water Board approved the sale of up to \$300 million in Revenue Bonds in September 2005 for the CWSRF Program to cover any shortfall of funds. • Estimated repayments include repayments from existing and future financing. • Estimated disbursements include disbursements remaining on executed financing and planned disbursements on projects with preliminary funding commitments. • Local match credits are the anticipated funds that will be contributed for local match financing included in "Estimated Disbursements." • Excludes Principal Forgiveness funds. | | | | | |

Fiscal Impact on CWSRF Program Principal Forgiveness/Grants

| As of 08/25/2011: | Principal Forgiveness/Grants | | | |
|---|------------------------------|------------------------|-----------------------|-----------------------|
| | Category 1 | Category 1 SCG fees | Category 2 | Total |
| Beginning Balance | \$57,662,289 | \$1,000,000 | \$40,108,193 | \$98,770,482 |
| City of Williams, #4049-110 (committed 12/01/09) | (\$6,000,000) | | | |
| City of Redding, #4971-240 (committed 04/19/11) | | | (\$3,000,000) | |
| City of Modesto, #5175-210 | | | (\$3,000,000) | |
| Russian River County Sanitation District, #5201-110 (committed 01/07/11) | (\$2,100,000) | | | |
| San Luis Obispo (Los Osos), #5230-110 | (\$7,500,000) | | | |
| Calaveras County Water District, #5249-110 | (\$2,210,440) | | | |
| Heber Public Utility District, #5302-110 | (\$6,000,000) | | | |
| Victor Valley Wastewater Rec Authority, #5376-110 (committed 10/11/10) | | | (\$3,000,000) | |
| City of Tehachapi, #5563-110 | | | (\$2,675,000) | |
| Susanville Sanitary District, #5727-110 (committed 02/01/11) | | | (\$1,392,595) | |
| City of Redding, #5835-110 (committed 08/26/10) | | | (\$1,233,052) | |
| City of East Palo Alto, #5956-110 | | | (\$276,250) | |
| City of Los Angeles, #7055-110 | | | (\$3,000,000) | |
| City of Stockton, #7085-110 | | | (\$1,625,000) | |
| Santa Nella County Water District, #7132-110 | | | (\$2,146,875) | |
| Earlimart Public Utility District, #7190-110 (committed 01/11/11) | | | (\$359,707) | |
| City of Rio Dell, #7401-110 | (\$6,000,000) | | | |
| City of Redding, #7456-110 (committed 07/21/10) | | | (\$1,682,280) | |
| City of Anaheim, #7620-110 | | | (\$1,560,479) | |
| City of Anaheim, #7622-110 | | | (\$574,797) | |
| City of Anaheim, #7630-110 | | | (\$513,178) | |
| Sutter County, #7732-110 (committed 05/26/11) | (\$400,180) | (\$1,000,000) | | |
| City of Anaheim, #7800-110 | | | (\$1,100,185) | |
| City of Colfax, #7806-110 | (\$3,319,000) | | | |
| | | | | |
| Subtotal | (\$33,529,620) | (\$1,000,000) | (\$27,139,398) | (\$61,669,018) |
| | | | | |
| Ending Balance | \$24,132,669 | \$0 | \$12,968,795 | \$37,101,464 |

REGIONAL BOARD IMPACT

The City's Project is necessary to comply with WDR Order No. R5-2007-0130 (NPDES Permit No. CA0079529) and CDO No. R5-2010-0001, issued by the Central Valley Water Board, Sacramento office.

POLICY ISSUE

Should the State Water Board approve the Resolution to:

1. Approve a CWSRF PFC of \$12,825,600 for the City's Project with an extended term ending October 2038, a reduced interest rate of one percent, and an estimated \$3,319,000 in principal forgiveness?
2. Direct Division staff to allocate \$12,825,600 consistent with the construction schedule and availability of funds?
3. Condition 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. Condition 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. Condition 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. The City shall pay the interest on the outstanding debt (due October 1st 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 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.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Resolution.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030. In particular, approval of this item will assist in fulfilling Objective 1.3 to take appropriate enforcement actions and innovative approaches as needed to protect and restore all surface waters.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

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);

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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 1st 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.

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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 1st 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

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- 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.

Jeanine Townsend
Clerk to the Board