

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

ITEM 14

SUBJECT

CONSIDERATION OF A RESOLUTION CLARIFYING THE FUTURE SENIOR DEBT REQUIREMENTS IN THE POLICY FOR IMPLEMENTING THE CLEAN WATER STATE REVOLVING FUND (CWSRF) FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES (POLICY) AS RELATED TO PRINCIPAL FORGIVENESS (PF) FINANCING

DISCUSSION

Section X.G.1 of the CWSRF Policy prohibits a recipient's future debt from being senior to a CWSRF obligation. The CWSRF Policy does not prohibit a recipient from having existing senior debt. Section X.G.1 of the CWSRF Policy was adopted before the availability of PF financing. Section X.G.1 was clarified by [Resolution No. 2009-0075](#) on October 20, 2009, to allow refunding of senior debt under certain conditions.

The City of Los Angeles (City) has existing senior and parity debt, and foresees the possibility of entering into additional future senior debt. The City is a potential recipient of 100 percent PF financing offered by the CWSRF Program. The City has requested clarification of the provisions of Section X.G.1 of the CWSRF Policy in cases of 100 percent PF financing, and clarification may help other recipients of 100 percent PF who may want to enter into future senior debt. Applying Section X.G.1 as currently written to the City's 100 percent PF obligation will prevent the City from taking on future senior debt even though the City will not be expected to repay its 100 percent PF financing.

Although the intent of PF is that it does not have to be repaid, PF financings remain an obligation of the recipient until construction is completed. Removing the future senior debt requirements for 100 percent PF recipients reduces the Program's security level should the applicant declare bankruptcy before the project is completed.

Staff believes that removing or modifying this financial provision of the Policy in cases of 100 percent PF will have an insignificant effect on the security of CWSRF Program because the circumstances under which the seniority provisions will be effective are remote. Requiring a senior position, though, under these circumstances creates additional costs for applicants that may outweigh the benefits of PF.

POLICY ISSUE

Should the State Water Board:

1. Clarify that Section X.G.1 of the Policy prohibit all future senior debt (except under the conditions set forth in Resolution 2009-0075), including cases of 100 percent PF financing?
2. Clarify that Section X.G.1 of the Policy does not apply to 100 percent PF financing? or
3. Clarify that Section X.G.1 of the Policy allows future senior debt for 100 percent PF financing if approved by the Deputy Director of the Division?

FISCAL IMPACT

There is no direct fiscal impact to the CWSRF Program by taking action on this item.

REGIONAL BOARD IMPACT

None

STAFF RECOMMENDATION

The State Water Board should:

Clarify that Section X.G.1 of the Policy allows future senior debt for 100 percent PF financing if approved by the Deputy Director of the Division.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures.

D R A F T

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2011-

**CLARIFYING THE FUTURE SENIOR DEBT REQUIREMENTS IN THE POLICY FOR
IMPLEMENTING THE CLEAN WATER STATE REVOLVING FUND (CWSRF) FOR
CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES (POLICY) AS RELATED TO
PRINCIPAL FORGIVENESS (PF) FINANCING**

WHEREAS:

1. The Policy prohibits borrowers from entering into future debt senior to a CWSRF obligation;
2. The Policy was adopted before the availability of PF financing; and
3. Allowing recipients of 100 percent PF financing the ability to enter into future senior debt appears to create minimal additional risk for the CWSRF program.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

Clarifies that Section X.G.1 of the Policy allows future senior debt for 100 percent PF financing if approved by the Deputy Director of the Division.

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