

Summary of Comments and Staff Responses
DWSRF Policy Handbook
Public Comments to September 3, 2014 Draft
Item #6 – October 21, 2014 Board Meeting

Juanita Licata
October 5, 2014
Environmental Protection Agency (EPA) Region 9

Summary of Comment	Response
<p>1) Page 32, para. “2. Ineligible Costs” – This list should include “Projects needed primarily for fire protection”, as an ineligible cost as stated in the federal regulations 40 CFR 35.3520(e)(4).</p>	<p><i>Staff agrees with the comment, and recommends adding some clarification on the ineligibility of “projects needed primarily for fire protection” in Appendix I, “Capacity Limitations.”</i></p>
<p>2) Page 9, “C. Priority System, para 2. Other Factors” – The State Water Board may wish to consider a third bullet stating “Water and Energy Conservation: Projects that include water and energy conservation measures”, as another factor used to prioritizing the review of projects within a category. The need to prepare and cope with emergency drought conditions is a high priority and one that the DWSRF could successfully address.</p>	<p><i>Staff acknowledges and agrees that such measures are crucial to coping with emergency drought conditions. The inclusion of water and energy conservation measures is strongly supported by California’s DWSRF program. Such support can be demonstrated by a specific change that has been made to the Priority System (Section V.C). Category D now includes the replacement of “defective water meters”, which is recognized to be a cause of water loss but was previously not included as an eligible project. In addition, all applicants are encouraged to include project components that support the efficient operation of water system facilities.</i></p> <p><i>Section V “Program Management” (pgs. 7-11) is intended to provide a streamlined process which supports the efficient ranking and review of incoming applications, while preserving the inherent goals of the DWSRF program. Due to the short timeframe for adopting the inaugural DWSRF Policy, and the complexity of assigning points for Water and Energy Conservation, Staff believes this should be evaluated during the next revision of the DWSRF Policy.</i></p>

Michael Carlin
October 6, 2014
San Francisco Public Utilities Commission (SFPUC)

Summary of Comment	Response
<p>1) “The SFPUC strongly recommends that the DWSRF policy incorporate an Extended Term Financing option with a repayment term of 30 years.”</p>	<p><i>The DWSRF Policy Handbook supports loan terms of up to 30 years to disadvantaged communities, which is specifically allowed by the federal Safe Drinking Water Act (SDWA). In order to offer Extended Term Financing to a wider pool of applicants, the DWSRF Program would need approval from EPA. EPA issued a memorandum dated April 14, 2014 that outlines the criteria expected to be met for expanding ETF opportunities. Staff agrees that ETF is a valuable tool in addressing the growing need for investment in drinking water infrastructure, and will further explore the addition of EPA approval in 2015.</i></p>

Gary Breaux
October 6, 2014
Metropolitan Water District (MWD)
General Comments:

Summary of Comment	Response
<p>1) “The MWD is concerned that the large costs associated with new and upcoming drinking water regulations will place a significant strain on the DWSRF’s limited pool of funds, and for a time, would shift funding to Category A and away from a more robust funding portfolio.”</p>	<p><i>The DWSRF program has historically limited the offering of DWSRF funds to those projects that address risks to public health. However, changes to the program as outlined in the draft DWSRF Policy Handbook include the open submittal of a financing application for any eligible project, including those in lower categories. While the program will continue to prioritize funding based upon federal and state goals and objectives, staff believes this change will increase the number of projects funded.</i></p>
<p>2) Due to principal forgiveness provisions and prioritizing DACs and SDACs above other systems in the same category, MWD is concerned that if a disproportionate number of DWSRF applicants cannot pay back their loans, then the future viability of the DWSRF may be in jeopardy.</p>	<p><i>The Policy endeavors to meet the federal goal of prioritizing those projects that benefit DACs and SDACs by reviewing them over other projects in the same category. Staff recognizes that it is likely such projects will obtain some or all DWSRF funding in the form of principal forgiveness. However the purpose in offering principal forgiveness to DACs is to make the loan portion of the financing offered more</i></p>

	<p><i>affordable. Also note that the SDWA limits principal forgiveness funds to thirty (30) percent of the capitalization grant amount received for the year.</i></p> <p><i>Staff recognizes that projects in lower categories are more likely to not be considered a DAC or SDAC, and therefore more likely to obtain interest bearing loan financing. Changes to the DWSRF program, pursuant to the Policy, includes the open submittal of financing applications for any eligible project, including those in lower categories. Staff believes this change will allow for an increase in the amount of repayable loans, in addition to a more stable and robust loan fund.</i></p>
<p>3) Pages 25-30: MWD states that it “is not able to fully meet several of the financial requirements found in the DWSRF Policy Handbook”. MWD would request that DWSRF loans are subordinate to MWD’s revenue debt and any covenants or requirements in its bond indentures.</p>	<p><i>Section XI.A.4.iii.a states that “the State Water Board normally expects the DWSRF debt obligation to be a senior debt obligation, unless the Division determines that credit considerations support a different result.” Our use of the word “senior” is meant to convey our expectation that the DWSRF obligation would be at the applicant’s highest tier of open debt – at parity. Where some applicants have two sets of open indentures – senior obligations and subordinate obligations, we would expect the DWSRF obligation to be on parity with the senior lien position. The Policy gives the Division the flexibility necessary to make alternative determinations on a case-by-case basis.</i></p>

Specific Comments:

Summary of Comment	Response
<p>1) Requests clarification on match financing.</p>	<p><i>Match financing is one option available to states to meet the federal capital contribution (i.e., the matching) requirement. It provides financing recipients the opportunity to contribute the matching funds on behalf of the state in exchange for a reduced financing cost. The State Water Board will determine yearly in the Intended Use Plan whether to offer the match financing option based on its cumulative match contributions relative to the cumulative federal capital contributions to the DWSRF.</i></p>

<p>2) MWD would need to request an exception to the proposed financial security reserve and coverage provisions. Suggested language is provided.</p>	<p><i>Staff believes that the Policy as written allows the Division to finalize these provisions on a case-by-case basis. Staff will consider each agreement's security provisions based on each applicant's credit profile.</i></p>
<p>3) MWD would need to request an exception from the proposed financial security additional debt provisions (same as general comment #3 above).</p>	<p><i>Staff believes that the Policy as written allows the Division to finalize these provisions on a case-by-case basis. Staff will consider each agreement's security provisions based on each applicant's credit profile.</i></p>
<p>4) Requests the creation of an appendix that lists and describes all pertinent federal and state statutes that would be included in a DWSRF financing agreement.</p>	<p><i>Staff agrees that a central location for federal and state requirements would prove to be extremely helpful for applicants. Since such requirements change frequently, staff believes a more appropriate location for such guidance would be on the Division's website. Staff will develop and post a draft list for applicants, though applicants must consult with their own counsel regarding the precise status of the laws.</i></p>
<p>5) Requests clarification on Davis Bacon responsibilities. Is the DWSRF program using Prop 84 funds for its match? Is contracting with the Compliance Monitoring Unit required?</p>	<p><i>Proposition 84 funds will no longer be used for the purposes of matching funds. Thus the Compliance Monitoring Unit of the Department of Industrial Relations must be used for <u>state labor compliance</u> purposes.</i></p> <p><i>Please note that DWSRF projects are required to adhere to the requirements of both state labor compliance regulations and federal Davis Bacon Act requirements. The Department of Labor is responsible for collecting and disseminating federal <u>Davis Bacon</u> prevailing wage data.</i></p>

Omar Carrillo

October 6, 2014

Community Water Center, Clean Water Action, Leadership Counsel for Justice and Accountability, and Environmental Justice Coalition for Water

Summary of Comment	Response
<p>1) Small Water System Program Plan: a) increase staff resources, b) provide a staff update on the progress of this program when the handbook is presented to the board, c) update the list of communities not meeting standards.</p>	<p><i>Staff is also concerned about systems that are not meeting state and/or federal drinking water standards. Although the DWSRF Policy supports the goals of the Small Water System Program Plan, it does not contain the list of water systems not meeting standards. Staff will work with the Division of Drinking Water to continue assisting the systems on the list when</i></p>

	<i>possible.</i>
<p>2) Legal Entity Formation Assistance (LEFA) Pilot Program: We recommend streamlining this process by making legal entity formation costs and fees part of the general planning process and an eligible Planning/Design Financing activity.</p>	<p><i>Costs related to the formation of a DWSRF eligible entity are eligible for reimbursement in a planning/design financing agreement. Such costs can only be reimbursed following the formation of the entity.</i></p> <p><i>The LEFA program was created and designed to assist those communities that are not currently eligible for DWSRF funding due to the lack of an eligible entity. However if the entity exists at the time of financing, such entity formation costs can be reimbursed in the planning/design financing agreement, if directly tied to the project.</i></p> <p><i>Staff agrees with the commenter's recommended language, and has prepared a change sheet to reflect the changes.</i></p>
<p>3) Guidelines for Consolidation Projects: "The creation of <i>Guidelines for Consolidation Projects [Appendix A]</i> appears as positive and critical step in that direction. Still, there is no mention in the new policy for how to facilitate consolidation between entities that are not public water systems. It also should include schools as an eligible participant. We recommend this section of the policy be clarified in order to maximize the effectiveness of this program."</p>	<p><i>Funding options for persons served by individual wells or surface water sources is limited to the creation of a new Community Water System (CWS) or the extension of service from a nearby existing Public Water System (PWS). These projects are not classified as "consolidation" projects because they do not include two or more PWSs (see Section IV(j)), and as such were not included in Appendix A, "Guidelines for Consolidation".</i></p> <p><i>While the creation of a CWS is defined as an eligible project type in Section IV(r)(b), the draft Policy does not mention the extension of service from an existing PWS as an eligible project. Staff recommends the addition of language clarifying that such projects are eligible, and has prepared a change sheet to show the suggested changes.</i></p> <p><i>Staff acknowledges that the commenter is requesting additional guidance on such projects, and will develop a document which provides additional guidance on such projects in 2015.</i></p>
<p>4) Consolidation Incentive: Proposes to move discussion of the consolidation incentive program into the Policy Handbook [from the IUP], perhaps into Appendix A (guidelines for consolidation projects).</p>	<p><i>Section V.F of the draft Policy states that incentives are established in the IUP. The State Water Board will consider and adopt an IUP each year as part of its grant application process to the U.S. Environmental Protection Agency. Placing such incentives in the IUP, rather than in the Policy or its appendices, provides the necessary flexibility to create, modify, or adjust</i></p>

	<i>incentives according to the availability of funds each year.</i>
5) Proposes to definitively state that SDAC projects <u>will</u> be provided with 100% principal forgiveness.	<i>Staff recognizes that severely disadvantaged water systems have no ability to repay financing (HSC §116761.20(b)(2)). Accordingly we can offer 100% principal forgiveness so long as the principal forgiveness amount does not exceed the amount available in the capitalization grant, and is within the allowable limits specified in the SDWA.</i>
6) The Policy Handbook makes no mention of the Safe Drinking Water Small Community Emergency Grant Fund, created pursuant to the Governor’s approval in 2013. We strongly support its implementation and know these resources are needed now, particularly in light of the current drought conditions impacting many communities. We urge steps be taken to advance necessary regulations so this program is operational in 2015.	<i>The draft Policy specifies that the State Water Board will utilize the IUP to establish charges, which includes those to be collected and expended under Section 116760.46 of the California Health and Safety Code. For clarification, staff recommends the addition of a new definition, the “Drinking Water Grant” or “DWG”, and has prepared a change sheet to show the suggested changes. Staff will utilize the IUP to define the criteria for receiving DWG funds.</i>
7) Create the Office of Sustainable Water Solutions to facilitate and promote regional solutions.	<i>Staff acknowledges the comment. The purpose and objective of the Policy is to implement the DWSRF program, created pursuant to the Safe Drinking Water Act (SDWA). The creation of an Office of Sustainable Water is therefore beyond the scope of the Policy. Staff will however apply your comment to future considerations of resource allocation and organizational structure.</i>
8) Interim/Emergency Resources – make bottled, vended or hauled water eligible for funding.	<i>A project which funds the provision of bottled, vended or hauled water does not meet the intent of the DWSRF program to provide a long-term, cost-effective solution to addressing the public health problem. In addition, the ongoing provision of interim water is considered an operational cost and as such is ineligible for reimbursement in federal regulations (40 CFR 35.3520(f)(2)). Although the DWSRF program cannot fund such costs, the Division has alternative funding available for bottled, vended and hauled water.</i>
9) Include language that indicates the board’s intent to integrate DWSRF actions into the Clean Water State Revolving Fund (CWSRF), such as pre-planning. Collaborate to address water and wastewater issues at the same time.	<i>The DWSRF program intends to fully collaborate with the CWSRF program whenever and wherever possible; however, the DWSRF Policy does not directly address the CWSRF program.</i>

Thomas DeSantis
October 6, 2014
City of Moreno Valley

Summary of Comment	Response
<p>1) Proposes that the ranking criteria be amended to prioritize projects based on their readiness to proceed.</p>	<p><i>Although “readiness to proceed” is not explicitly used in ranking projects, Section X (planning/design) and Section XI (construction) of the Policy states that “the Division will accept partial packages and applications, but will process complete applications ahead of incomplete applications.” By doing so, the Division will review and fund those projects that are ready to proceed with financing ahead of those projects that are not.</i></p>
<p>2) Funding to address fire flow inadequacies should be available.</p>	<p><i>The DWSRF program allows for fire flow consideration in the design of facilities (i.e. an additional capacity above the maximum day demand dedicated to fire flow), but restricts the additional capacity such that the project remains eligible. Federal regulations strictly prohibit states from funding projects “primarily for fire protection” (40 CFR 35.3520(e)(4)).</i></p> <p><i>Accordingly, eligible construction costs listed in Section XI.B include “equipment and additional capacity to provide fire protection as required by the applicable governing fire code and incidental appurtenances for fire protection such as fire hydrants”.</i></p>

Senator Ben Hueso, Assemblymember Luis Alejo, Assemblymember Rudy Salas –
October 3, 2014

Summary of Comment	Response
<p>1) Request the Board to recognize the legislative intent of SB1292 [proposed increasing the principal forgiveness limit from \$3M per project to \$5M], and increase the financial assistance available to SDACs.</p>	<p><i>As acknowledged by the Governor’s veto message, upon adoption of the DWSRF Policy Handbook, principal forgiveness limits would be identified in the annual IUP. We intend to evaluate these limits annually, based upon funds available and the number of communities needing principle forgiveness as well as the size of the need for each project.</i></p>