



Santa Ana Watershed Project Authority

7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

May 25, 2007

Ron Sullivan
Commission
Chair

Celeste Cantú
General
Manager

Eastern
Municipal
Water
District

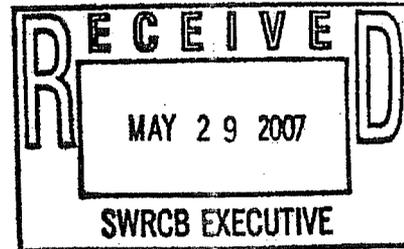
Inland
Empire
Utilities
Agency

Orange
County
Water
District

San
Bernardino
Valley
Municipal
Water
District

Western
Municipal
Water
District

Ms. Song Her, Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, California 95814



Subject: Comment Letter – SRF Policy

Dear Ms. Her:

As one of the agencies recently considered by the Board for a State Revolving Fund Loan penalty, SAWPA appreciates the Board's reconsideration of the current policy. SAWPA understands the importance of meeting commitments to construct and operate the facility contracted for under the SRF loan program. The SWRCB should have the tools necessary to require compliance but these tools should offer flexibility to the Board based upon the severity of the non-compliance. Also, these tools should encourage timely identification and rapid resolution of issues identified. A simple administrative oversight should not result in huge financial penalties as the current policy requires.

SAWPA supports the concepts identified in options 3, 1, and 2 with Option 3 being the most preferred. Further, SAWPA supports a phased approach to the SWRCB's response incorporating administrative actions first, such as default notification and establishment of a response timeline, followed by withholding of a portion of further loan payments. Termination of the loan agreement should be an option in extreme cases.

The SRF loan program has been a critical project financing tool for important watershed infrastructure. SWRCB program administration should provide reasonable assurances that projects are appropriately completed and encourage compliance with incremental incentives (penalties).

Thank you for this opportunity to comment.

Sincerely,

Ron Sullivan
SAWPA Commission Chair

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11615 Sterling Avenue, Riverside, CA 92503-4979 • (951) 354-4220
www.sawpa.org • Administration FAX (951) 785-7076 • Planning FAX (951) 352-3422

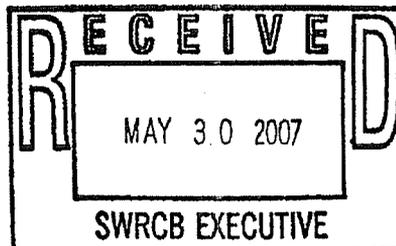




7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

May 30, 2007

Song Her, Clerk to the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814



Subject: Comment Letter – SRF Policy

Dear Ms. Song Her:

Thank you for the opportunity to participate in the upcoming policy discussion regarding the possible amendment to the State Revolving Fund's ("SRF") loan administration policy.

We would like to take this opportunity to express our appreciation and gratitude to the many members of the SRF staff who have assisted us through the SRF loan process. These loans have resulted in wastewater treatment infrastructure that has served us well. Unfortunately we were one of several agencies that failed to produce some of the reports at the proper time. We apologize for any inconvenience that we may have caused the SRF staff in this matter.

We concur with the SRF staff recommendation, and consider that a combination of Options 1, 2 and 3 are the best policy for any future loans.

The City of Escondido hopes that the Board will re-consider the penalties that have been assessed against our city. Our budget has no reserves for such a financial impact, and a significant penalty would jeopardize our essential future wastewater capital improvements.

Sincerely,

Mary Ann Mann
Utilities Manager, City of Escondido



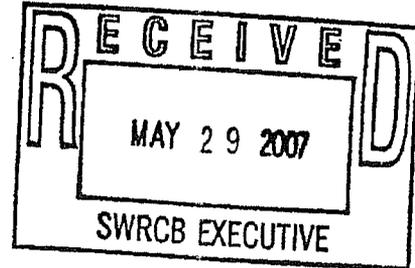
City of Alameda • California

7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

May 29, 2007

Ms Song Her, Clerk of the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, Ca 95814

Subject: Comment Letter- SRF Policy
SFR Loan, C-06-4007-610



Honorable Board Members:

In April 2004, the City of Alameda received our fourth State Revolving Fund (SFR) loan, C-06-4007-610 to replace 8,400 lineal feet of sewer mains and 7,800 lineal feet of lower lateral pipes. This project allowed the City to attain the objectives of the Federal Clean Water Act, one of the goals of the SRF loan program, by reducing infiltration and inflow into the wastewater purveyor's (EBMUD) system. The City would like to thank the State Water Resources Control Board for approving our project and we look forward to future partnerships with the Board.

As the implementing agency for the subject loan, the City developed a certification program, upon completion of construction and at the time of initiation of operations, and worked diligently on corrective actions to reach Project Certification. We actively provided information to Board staff regarding our efforts to meet the loan requirements; however, the new Board staff managing the project did not consistently respond. Our ongoing communications included informing Board staff of scheduled changes, project progress, and difficulties encountered with meeting the surcharge requirement. It wasn't until September 12, 2006, six days after the Board considered staff's recommendation to waive a \$967,649 penalty (60% of the loan amount) against the City that we were even notified that Board staff had concerns with our progress on the project. Attached please find copies of the City of Alameda's letters to Board staff, dated October 18, 2006 and February 28, 2007, that list a chronology of events. We are also pleased to report, that a final Certification Report was submitted to the Board on May 9, 2007.

Since the City of Alameda acted in good faith throughout the process; was working diligently to meet all loan requirements; provided on-going information to the Board staff, informing them of the difficulties with the project and actively working to obtain the necessary certification; developed and implemented a Corrective Action Plan; and recently completed and submitted a final Certification Report, we consider the proposed penalty to be unfair and unjustified. We respectfully request that the Board reconsider the proposed penalty.

Public Works Department
950 West Mall Square, Room 110
Alameda, California 94501-7575
510.749.5840 • Fax 510.749.5867 • TDD 510.522.7538

In addition to the City of Alameda, there are five other agencies with proposed penalties as a result of similar policy violations. The penalties will drastically affect the six agencies' General Funds, which would not be meeting the intent of the loan program. Consequently, the SWRCB staff is recommending three options to ensure that the Performance and Corrective Actions Reports are submitted in a timely manner. The City of Alameda concurs with the SWRCB staff in recommending a combination of the first three options listed below:

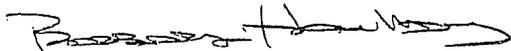
OPTION 1: Retain a portion of the loan balance until the appropriate report is submitted;

OPTION 2: Stop processing any pending or future applications for new loans or grants, and withheld payments on any existing loans and grants that the agency may have with the State Water Board, until the Certification requirements are met; and

OPTION 3: Implement an administrative procedure to bring recipients into compliance up to and including possible termination of the loan agreement.

In conclusion, the City of Alameda respectfully requests a full waiver of the proposed penalty based on the existing SRF Policy Section XVIII, B. The City further supports Board staff's recommendation to amend the policy and implement a combination of the first three options. Penalizing local agencies that depend on low interest loans and grants for implementing the Clean Water Acts requirements is contrary to the goal of the SRF. Imposing the proposed penalty will impact the City of Alameda's ability to apply its capital resources towards improving old and dilapidated infrastructures and thus create potential health and safety problems in the future. Thank you for your consideration of our request.

Sincerely,



Barbara Hawkins
City Engineer

Attachments



City of Alameda • California

October 18, 2006

David Kim, Senior Engineer
State Water Resources Control Board
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244-2120

Re: City of Alameda Infiltration and Inflow Phase 8, Sanitary Sewer Replacement Project, No. P.W. 04-01-12, SRF Loan No. C-06-4007-610, Request to Waive the Proposed Penalty

Dear Mr. Kim:

The City was informed on September 12, 2006 of the State Water Resources Control Board's (SWRCB) intent to consider imposing a penalty in the amount of \$967,649 on the State Revolving Fund (SRF) loan that the City of Alameda used to rehabilitate the sewer collection system in 2002/2003. The proposed penalty was the result of the City of Alameda and five other agencies failure to submit the Project Performance Report and Project Certification on time. While the City of Alameda appreciates the SWRCB's help in approving the loan for the corrective work and the effort of staff to request a waiver of the penalties, the City of Alameda believes the enforcement of a penalty needs further consideration. The SRF program is a partnership between the SWRCB and the local agencies where funding is made available to maintain state wastewater facilities. The administrative role is managed by the SWRCB while implementation is the responsibility of the local agency.

Unfortunately, the SWRCB staff did not notify the City of Alameda of their scheduled meeting on September 6, 2006, so the City could not present an explanation of the sequence of events that led to the development of the corrective plan. The following is synopsis of important tasks and events relative to the project implementation:

- In July 2001, the City of Alameda submitted a Facilities Planning Application to the SWRCB for the construction of Infiltration and Inflow Sanitary Sewer Replacement, Phase 8 Project. In May 2002, the City received an e-mail from the SWRCB staff giving approval to proceed with the construction of the project. The final loan agreement was not sent to the City of Alameda until April 2004.
- The project was not inspected during or after construction by SWRCB staff as they had for the previous SRF loan funded projects in the City of Alameda. The City of Alameda staff was in ongoing communication with the SWRCB staff informing them of schedule changes and project progress.

Public Works Department
950 West Mall Square, Room 110
Alameda, California 94501-7575
510.749.5840 • Fax 510.749.5867 • TDD 510.522.7538

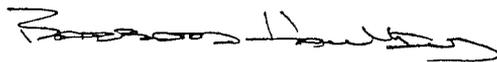
- The project was completed in May 2003 and the City of Alameda submitted the Initiation of Operation request to the SWRCB in May 2003. However, the SWRCB staff never acknowledged receipt of the Initiation of Operation request or acceptance of the proposed date. Since the proposed date for the Initiation of Operation was never accepted, the due date for the Compliance Report was never set.
- In October 2003, the City requested approval of the monitoring plan from which the Compliance Report would be based, but the SWRCB staff never responded. The City continued to communicate with the SWRCB staff informing them of the difficulty in determining the cause of the surcharge outside the subject subbasins. This process took more than the allotted 15 months. Until the City had identified a potential corrective action the City could not provide the information required in the corrective action report. It was not until an adjacent subdivision in a downstream subbasin had sewer backups that the City was able to redirect the analysis and find the problem.
- In April 2006, the City was notified by SWRCB that they were waiting for the City to submit a Compliance Report. The City submitted a Corrective Action Report in June 2006. It is anticipated that the City will complete all follow-up monitoring and analysis so that a Compliance Report can be submitted to the SWRCB by May 2007.

The City believes the penalty is unwarranted because the City met the implementation conditions of the agreement. Unlike previous SRF loan projects, where SWRCB staff actively provided administrative direction and acknowledgment of the City's submittals, the last SRF loan processing was less stringent. The City continued to communicate with the SWRCB staff regarding the project progress and administrative concerns. Yet the SWRCB staff did not direct the City of Alameda to provide any additional documentation. The City therefore is requesting a waiver of the penalty.

If you have any questions or need additional information regarding this request, please call Wali Waziri at (510) 749-5853.

Sincerely,

Matthew T. Naclerio
Public Works Director



Barbara Hawkins
City Engineer

BH:gc



City of Alameda • California

February 28, 2007

James Maughan, Assistant Deputy Director
State Water Resources Control Board
Division of Financial Assistance
1001 I Street
Sacramento, CA 95814

Re: City of Alameda Infiltration and Inflow Phase 8, Sanitary Sewer Replacement Project, No. P.W. 04-01-12, SRF Loan No. C-06-4007-610, Request to Update the City on the Status of Waiver of the Proposed Penalty

Dear Mr. Maughan:

This is a follow up to the City of Alameda letter dated October 18, 2006 addressed to David Kirn, Senior Engineer at the State Water Resources Control Board (SWRCB), requesting to waive the proposed penalty on the Loan No. C-06-4007-610 that the City of Alameda obtained for the Infiltration and Inflow Phase 8, Sanitary Sewer Replacement Project.

The City was informed on September 12, 2006 of the State Water Resources Control Board's (SWRCB) intent to consider imposing a penalty in the amount of \$967,649 on the State Revolving Fund (SRF) loan that the City of Alameda used to rehabilitate the sewer collection system in 2002/2003. The proposed penalty was the result of the City of Alameda and five other agencies failure to submit the Project Performance Report and Project Certification on time. While the City of Alameda appreciates the SWRCB's help in approving the loan for the corrective work and the effort of staff to request a waiver of the penalties, the City of Alameda believes the enforcement of a penalty needs further consideration. The SRF program is a partnership between the SWRCB and the local agencies where funding is made available to maintain state wastewater facilities. The administrative role is managed by the SWRCB while implementation is the responsibility of the local agency.

Unfortunately, the SWRCB staff did not notify the City of Alameda of their scheduled meeting on September 6, 2006, so the City could not present an explanation of the sequence of events that led to the development of the corrective plan. The following is synopsis of important tasks and events relative to the project implementation:

Office of the City Clerk
2263 Santa Clara Avenue, Room 380
Alameda, California 94501-4477
510.747.4800 • Fax 510.747.4805 • TDD 510.522.7538

James Maughan
Request to Update The City on the Status of Waiver of the Proposed Penalty

February 28, 2007
Page 3

If you have any questions or need additional information regarding this request, please call Wali Waziri at (510) 749-5853.

Sincerely,

Matthew T. Naclerio
Public Works Director



Barbara Hawkins
City Engineer

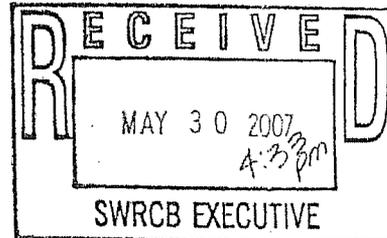
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7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

May 30, 2007

Ms. Song Her, Clerk of the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814



SUBJECT: Comment Letter – SRF Policy

Dear Ms. Her:

The North San Mateo County Sanitation District (District), a subsidiary of the City of Daly City, appreciates the opportunity to formally comment on the proposed amendments to the *Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities* scheduled for public hearing at the State Board's July 17, 2007 meeting. As one of six agencies identified as having submitted a late Project Certification Report, our District seeks the implementation of a modified policy and procedural mechanism that balances compliance reporting requirements against meaningful and proportionate consequences.

Our District concurs with Board staff's findings and is hopeful that those findings are taken into consideration by the State Board during its deliberations. Specifically, please note the following:

1. All six affected agencies have made all loan repayments in a timely manner;
2. There is no record or evidence to suggest that the agencies intended to ignore the SRF Loan Program requirement; and,
3. The failure to submit timely certification reports did not adversely affect water quality.

Our District also appreciates that State Board directed its staff to re-examine the penalty provisions against the specific compliance circumstances associated with each project. It is our District's belief that it complied with the Board's policy when it submitted its April 10, 2006 Project Certification Report. On April 4, 2006, Mr. Glenn Zeichner of your staff sent an e-mail to Patrick Sweetland, our local project manager. That e-mail inquired about the status of the report and stated, "the need to get it done to avoid penalties." Mr. Zeichner's e-mail was interpreted by our local project manager as a proactive reminder that the Report was due. This reminder was consistent with our District staff's understanding of the 15-months reporting requirement from the time when the District Board of Directors accepted the project as complete on January 10, 2005. At no time did our District believe it was facing any penalties at the time of Mr. Zeichner's e-mail, and was further advised that even if late, that the Board would waive any penalties. Our District's April 10, 2006 Project Certification Report was received on April 12, 2006, a mere eight days from receipt of Mr. Zeichner's e-mail.

Ms. Song Her, Clerk of the Board
May 30, 2007
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It was not until September 13, 2006 that our District became aware it was facing a \$181,737 penalty for being 42 days late in submitting its Report. Our District contends that it acted in good faith in the submission of the Report. Further, we believe we have met the spirit of the reporting and performance requirements and that the eight-day reporting discrepancy does not justify the \$181,737 penalty.

Our District appreciates the analysis presented by State Board staff to cooperatively address the issues with the goal of eliminating the penalty amounts. We support the measures proposed by State Board staff to implement a combination of Options 1, 2 and 3. The integration of the three options into an amended policy represents a progressive approach toward ensuring timely project submittals. Our District concurs with withholding retention of a loan amount until the Report is submitted, but would recommend a lower threshold of two percent to minimize cash flow impacts. By doing so, an agency controls its own destiny regarding the release of final project funds. Halting the processing of pending or future applications from that same agency would be a progressive action, but our District recommends a sixty (60) day grace period following the 12 month period to avoid any unintended consequences of timing. Finally, we agree that implementing administrative procedures including the termination of a loan agreement is an appropriate final corrective action should an agency fail to comply.

Staff is available to answer questions or to provide additional information. If you require additional information, please do not hesitate to contact our local project manager, Patrick Sweetland, Director of Water and Wastewater Resources at (650) 991-8201.

Sincerely,

Patricia E. Martel
General Manager

7/17/07 BdMtg
SRF Policy
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May 30, 2007

Reply to:

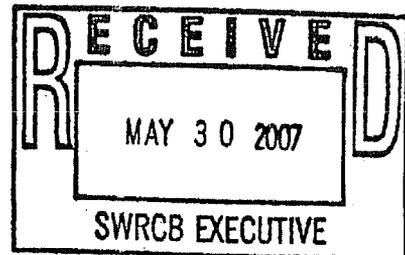
813 Sixth Street, Third Floor
Sacramento, CA 95814
(916) 446-7979
blarson@lawssd.com

Via E-mail & First-Class Mail

Ms. Tam M. Doduc, Chair & Members
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Attention: Ms. Song Her, Clerk to the Board
commentletters@waterboards.ca.gov

Re: Comment Letter – SRF Policy



Dear Chair Doduc & Members of the Board:

The California Association of Sanitation Agencies (CASA), the Southern California Alliance of POTWs (SCAP), and Tri-TAC appreciate the opportunity to comment on the recently issued notice of a proposed amendment to the *Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities*. Specifically, the proposed amendment relates to the current policy pertaining to timely compliance with the Performance Certification/Corrective Action Report requirements and, specifically, assessment of penalties for noncompliance with Performance Certification requirements. SCAP is a non-profit association organized to ensure that regulations affecting local public agencies are reasonable and in the best interest of the public. Tri-TAC is a technical advisory group jointly sponsored by CASA, the California Water Environment Association, and the League of California Cities. CASA is a statewide association of cities and special districts providing wastewater collection, treatment, and water recycling services to millions of Californians. The constituent agencies of Tri-TAC, SCAP, and CASA serve most of the sewered population in California. As discussed more fully below, Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective.

Ms. Tam M. Doduc, Chair & Members
State Water Resources Control Board
May 30, 2007
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It is our understanding that the issue before the State Water Board arose due to the identification of six agencies (with a total of ten loan projects) that had not complied with the Performance Certification requirements within the 15-month window following completion of construction. It is also our understanding that there were 62 projects that fully complied with these requirements during the same period. The Staff Report points out that in September 2006, penalties for the 10 projects were considered, but were not adopted by the Board, and that instead the Board requested staff to "recommend a penalty that is consistent with the circumstances associated with each project and reasonably reflects the need for the Project Performance Report and Certification, or Corrective Action Report."

The crux of the matter is that under the current SRF Policy, disproportionately large penalties are required to be levied against the loan recipients, none of who appeared to be intentionally or willfully ignoring SRF program requirements. Nor did their failure to certify their projects in a timely manner adversely affect water quality. In fact, when brought to their attention, all six agencies took steps to remedy the situation and, other than paying the fines, have now complied with the Performance Certification requirements. Moreover, we believe that not only does the punishment not fit the crime, but, as stated in the Staff Report, the current SRF penalty requirement contained in the Policy exceeds their statutory authority and may be unlawful. In general, the State Water Board has a history of applying reasonable consequences that are commensurate with the circumstances. We believe that the same principle should be applied here.

In the context of the Staff Report, three of the seven options presented (Nos. 4, 5, and 7, which includes the existing policy) involve the levying of fines and should be dismissed from further consideration, both because there does not appear to be any supporting legal authority for monetary penalties and because fines are not necessary to compel compliance. Option No. 6, the elimination of all penalties, would solve the immediate problem of the fines, but does not provide any administrative remedies for ensuring compliance with SRF program requirements. Thus, it should also be eliminated from further consideration, since it is reasonable for the State Water Board to clearly state its expectations, procedures and consequences with respect to program reporting requirements, and simply eliminating the penalties does not address this need.

Option No. 1, the retention of a portion of the loan balance, would certainly provide agencies with a strong incentive to comply with the Performance Certification requirements. Unfortunately, it does so in an overly punitive fashion by penalizing all agencies, not just those which fail to comply with the Performance Certification requirements. Agencies would be required to carry the retention for up to 15 months and/or obtain some type of bridge financing. The added cost of doing this lessens the benefit of participating in the SRF program, hurting the overall long-term viability of the program. If the problem was widespread and more than an administrative issue, this solution might make sense; however, given the limited nature of the problem that has

been identified, this solution would unfairly penalize compliant program participants and therefore should be eliminated from further consideration.

Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective. The real problem is agencies "falling through the cracks" and inadvertently failing to comply with all of the SRF program requirements. None of the six agencies that failed to submit the Performance Certification did so deliberately. In fact, when made aware of the noncompliance, all six took steps to correct the situation and are now in compliance. Thus, additional administrative procedures should be developed to ensure that agencies are aware of the requirements and are given timely notice of any missed deadlines so that appropriate corrective steps can be taken. If an agency continues to fail to correct the problem, more stringent steps can then be taken.

We recommend that the administrative procedures begin with the first annual SRF loan repayment, which is due 12 months after the completion of construction (a full three months before the Performance Certification is due). The State Water Board staff already sends out a reminder letter regarding that payment; the same letter could also contain a reminder regarding the Performance Certification. If an agency still fails to submit the required documentation, a meeting should then be held between the respective staffs to determine the cause for non-compliance. At the discretion of the State Water Board staff, a compliance time schedule could then be established for submitting the documentation. Failure to comply with the time schedule should result in one of the following two monetary disincentives being implemented.

- For agencies with other on-going loans, the suspension of future disbursements (Option No. 2).
- For agencies having no other loans in process, steps could be taken to accelerate the repayment of the existing loan.

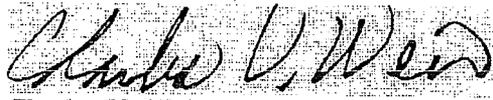
In conclusion, CASA, SCAP, and Tri-TAC recognize the need for agencies to comply with all of the requirements of the SRF program but urge the State Water Board to address the problem by assisting loan recipients to comply in the first instance, rather than by levying harsh penalties that will only discourage agencies from using the SRF program. Simple improvements in administrative procedures appear likely to address the issue in most if not all instances. It would cause great damage to the SRF program and to agencies' ability to comply with water quality regulations if punitive provisions such as those in Option 1 were implemented across the board. Therefore, we urge you to pursue a modified version of Option 3, as described above.

Ms. Tam M. Doduc, Chair & Members
State Water Resources Control Board
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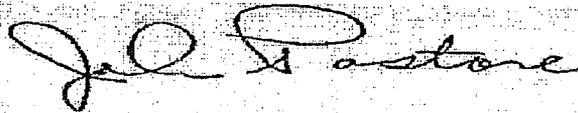
If you have any questions about our position and recommendations, please contact Dave Bruns, Chair, Tri-TAC Subcommittee on Finance, at (562) 908-4288, x-2704 or dbruns@lacs.org. Thank you for your consideration of our comments.



Roberta Larson, CASA
Director, Legal and Regulatory Affairs
CASA



Charles V. Weir
Chair
Tri-TAC



John Pastore
SCAP

cc: Dave Bruns, Tri-TAC Subcommittee on Finance
Ahmad Kashkoli, State Water Board staff



7/17/07 BdMtg

SRF Policy

Deadline: 5/30/07 Noon

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

STEPHEN R. MAGUIN
Chief Engineer and General Manager

Via Electronic & U.S. Mail

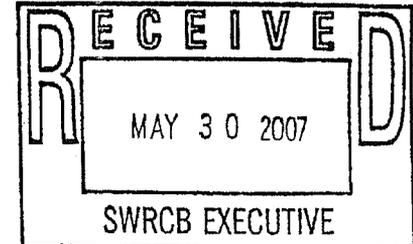
May 30, 2007

File No. 31-370.40.4D

Ms. Tam M. Doduc, Chair & Members of the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814

Attention: Ms. Song Her, Clerk to the Board

Dear Ms. Doduc, Chair & Members of the Board:



**Proposed Amendment to the Policy for Implementing the State Revolving
Fund (SRF) for Construction of Wastewater Treatment Facilities**

The Sanitation Districts of Los Angeles County, a long-time participant in the SRF program, appreciate the opportunity to comment on the recently issued notice of a proposed amendment to the *Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities*. Specifically, the State Water Resources Control Board (SWRCB) had instructed its staff to review the current policy pertaining to timely compliance with the Performance Certification / Corrective Action Report requirements and to recommend amendments to the policy. The Sanitation Districts provide wastewater conveyance, treatment, disposal, and water reuse services to over 5 million people in 78 cities and unincorporated territory within Los Angeles County.

The SWRCB has a long history of addressing issues related to the SRF without being overly broad or unduly harsh. We believe that same principle should be applied here. In order to adequately evaluate the proposed options, it is important to understand the underlying problem that needs to be remedied to ensure that the recommended solution really does fix the problem without inappropriately creating adverse impacts on the vast majority of loan recipients that are in full compliance with SRF program requirements.

SWRCB staff identified six agencies (with a total of ten loan projects) that had not complied with the Performance Certification requirements within the 15-month window following completion of construction. Staff further pointed out the magnitude of the problem by providing a table that shows the accumulated fines levied under the existing policy total over 50% of the original SRF loan amount. While the size of those fines are extraordinary and warrant attention, they don't adequately characterize the true problem. When questioned as to why the six agencies failed to comply with the requirements, SWRCB staff has told us that "they fell through the cracks" and that there was no intent by the loan recipients to defraud or not comply. In fact, when brought to their attention, all six agencies took steps to remedy the situation and, other than paying the fines, have now complied with the Performance Certification requirements. Additionally, during the same time period (August 2002 through May 2006), there were 62 projects that fully complied with the requirements in the 15-month time frame. Thus, the problem seems to be one of administrative procedure, and not an endemic problem requiring huge penalties or other extremely punitive measures.

Notwithstanding that, we believe that the SRF Policy does need to be revised to address this issue, as there does not appear to be underlying statutory authority for the SWRCB to assess fines for non-compliance with the SRF program reporting requirements. In the context of the Staff Report, three of the seven options presented (Nos. 4, 5, and 7, which includes the existing policy) involve the levying of fines and, thus, exceed the SWRCB's statutory authority. Consequently, they should be dismissed from further consideration. Option No. 6, the elimination of all penalties, does solve the immediate problem of

May 30, 2007

the fines, but does not provide any administrative remedies for ensuring compliance. Thus, it should also be eliminated from further consideration, since it is reasonable for the SWRCB to clearly state its expectations, procedures and consequences with respect to program reporting requirements, and simply eliminating the penalties does not address this need.

Option No. 1, the retention of a portion of the loan balance, would certainly provide agencies with a strong incentive to comply with the Performance Certification requirements. Unfortunately, it does so in an overly punitive fashion by penalizing all agencies, not just those who fail to comply with the Performance Certification requirements. Agencies would be required to carry the retention for up to 15 months and/or obtain some type of bridge financing. The added cost of doing this lessens the benefit of participating in the SRF program, hurting the overall long-term viability of the program. If the problem was widespread and more than an administrative issue, this solution might make sense; however, given the minimal nature of the existing problem, this solution would unfairly penalize compliant program participants and therefore should be eliminated from further consideration.

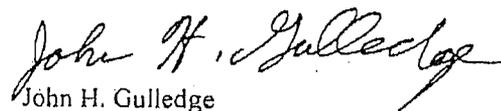
Option No. 3, the implementation of administrative procedures, is the preferred option from our perspective. The real problem is agencies "falling through the cracks" and inadvertently failing to comply with all of the SRF program requirements. Of the six agencies that failed to submit the Performance Certification, none of them did so with deliberation and purposeful noncompliance. In fact, when made aware of the problem, all six took steps to correct the situation and are now in compliance. Thus, additional administrative procedures should be developed to ensure that agencies are aware of the requirements and are given timely notice of any missed deadlines so that appropriate corrective steps can be taken. If an agency continues to fail to correct the problem, more stringent steps can then be taken.

We recommend that the administrative procedures begin with the first annual SRF loan repayment, which is due 12 months after the completion of construction (a full three months before the Performance Certification is due). The SWRCB staff already sends out a reminder letter regarding that payment; the same letter could also contain a reminder regarding the Performance Certification. If an agency still fails to submit the required documentation, a meeting should then be held between the respective staffs to determine the cause for non-compliance. At the discretion of the SWRCB staff, a compliance time schedule could then be established for submitting the documentation. Failure to comply with the time schedule should result in one of the following two monetary disincentives being implemented.

- For agencies with other on-going loans, the suspension of future disbursements (Option No. 2)
- For agencies having no other loans in process, steps could be taken to accelerate the repayment of the existing loan.

In conclusion, the Sanitation Districts recognize the need for agencies to comply with all of the requirements of the SRF program but urge the SWRCB to address the problem before them by assisting loan recipient in the first instance, rather than by penalizing them and sending the message that paperwork requirements are more important than the infrastructure improvement projects themselves. Simple improvements in administrative procedures appear likely to address the issue in virtually all instances. It would cause great damage to the SRF program and to agencies' ability to comply with environmental regulations if punitive provisions such as those in Option I were implemented across the board. Therefore, we urge you to pursue a modified version of Option 3, as described above.

Very truly yours,
Stephen R. Maguin


John H. Gulledge
Department Head
Financial Planning Department



7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

DEPARTMENT
OF UTILITIES

CITY OF SACRAMENTO
CALIFORNIA

1395 35th AVENUE
SACRAMENTO, CA
95822-2911

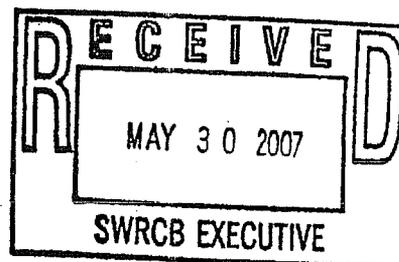
ENGINEERING
SERVICES DIVISION

PH 916-808-1400
FAX 916-808-1497/1498

May 30, 2007

(70284:RB:kp)

Ms. Song Her, Clerk
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, California 95814



Dear Ms. Her:

Re: Proposed Amendment to the State Revolving Fund (SRF) Policy

This comment letter is submitted on behalf of the City of Sacramento ("City") in response to the Notice of a Proposed Amendment to the Policy for Implementing the SRF for Construction of Wastewater Treatment Facilities, issued by the State Water Resources Control Board (the "Board") on May 1, 2007.

Procedural Background

The Board considered an agenda item on September 6, 2006, requesting Board approval of a resolution waiving interest penalties for six agencies that inadvertently submitted late project performance certifications for ten SRF projects. The Board's SRF policy requires an agency receiving SRF loan funds to certify that the project being funded meets its performance objectives within 15 months after initiating operations.

The staff report for this item indicated that the City could be subject to an interest penalty for the City's SRF-funded Sump 2/2A Improvement Project of over 46 million dollars, based on the SRF interest penalty formula, that assesses one-tenth-of-one-percent of the outstanding loan balance per day for the period of time that a project completion certification is late. The SRF loan amount for this project was approximately \$37 million.



CITY OF SACRAMENTO
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The staff report requested waiver of the interest penalties for the City and five other agencies, based on staff's judgment that application of the interest penalties would be "unfairly punitive," because (1) due to personnel changes and loan tracking software development, SWRCB staff failed to provide the agencies with a reminder of the certification requirement, which was standard practice, (2) all the agencies have now fulfilled the requirement, (3) all loan repayments have been made in a timely manner, and (4) there was no evidence to suggest that the agencies intended to ignore or thwart the certification requirement.

As indicated in the Board's May 1 Notice, on September 6 the Board did not approve staff's waiver request, but, instead, directed staff to re-examine the SRF Policy's penalty provision and return with a recommendation for appropriate penalties. The Board's May 1 Notice identifies six options for revising the SRF Policy's penalty provision, plus a seventh option to leave the current provision as is.

The City's SRF Loan

As noted, the City's SRF Loan referenced in the State Board's May 1 Notice was for construction of the City's Sump 2/2A Improvement Project (SRF Project No. C-06-4441-120). Sump 2/2A is a major component of the Combined Wastewater Control System (CWCS) that collects sewage and storm drainage from an approximately 15 square mile area in the City of Sacramento and ultimately delivers this combined wastewater to the Regional Wastewater Treatment Plant near Freeport. The City's Sump 2/2A Improvement Project, completed by the City in July of 2001, generally consisted of the construction of a new pump station (Sump 2A) and modification of an existing pump station (Sump 2) in order to increase system capacity and improve the operation of the CWCS. The Sump 2/2A Improvement Project was a central component of the City's overall CWCS Improvement Project that has been approved by the California Regional Water Quality Control Board, Central Valley Region, in order to reduce combined wastewater outflows and overflows in the CWCS.

The City's ongoing commitment to meet these objectives is reflected in the fact that, since 1995, the City has spent approximately \$115 million on projects to rehabilitate the system and to reduce combined wastewater outflows and overflows in the CWCS. In addition to the Sump 2/2A Improvement Project, other CWCS improvements completed in the last 12 years include Sump 1/1A and Pioneer Reservoir Improvements, UC Med Center Regional Storage, U&S Street Parallel Sewer Project, and Land Park Parallel Sewer Project. These efforts have been successful in significantly reducing the incidence of combined wastewater outflows and overflows.

Since inception of the loan, all SRF loan payments for the Sump 2/2A Improvement Project have been made on a timely basis. In addition to the Sump 2/2A Improvement Project, the City obtained SRF loans for four other projects during the same general time period, and has made all loan payments for these projects on a timely basis as well. The City filed project performance certifications for these other projects within the specified time period, but, due to an

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unintentional oversight by the staff person who served as project manager for the Sump 2/2A Improvement Project (who by that time was managing other projects), the deadline for filing the project performance certification for the Sump 2/2A Improvement Project passed in September of 2002 without notice by the City or SWRCB staff. When SWRCB staff noticed this oversight and alerted City staff in September, 2006, the City promptly provided the required certification.

The Board's Proposed Amendment to the SRF Policy

The City agrees that the penalty provision of the SRF Policy is in dire need of amendment. As noted in the State Board's May 1 Notice, the present penalty provision purports to impose a penalty that is completely disproportionate to the procedural oversight for which the penalty is imposed.

For example, in the City's case, although the SRF loan funds were used properly for their intended purpose and the Sump 2/2A Improvement Project met and continues to meet its performance objectives, City staff inadvertently failed to provide a timely project performance certification. A courtesy reminder from Board staff at the time certainly would have triggered timely compliance, and when such reminder was provided in 2006, the City promptly provided the required paperwork. The fact that State Board staff did not notice anything amiss for over 3 ½ years after the submittal deadline passed certainly suggests that the late certification submittal was wholly a procedural oversight with no substantive effect.

Imposing a monetary penalty for an unintentional procedural oversight makes no sense and does not serve the public interest. Rather than using public funds to pay such a penalty, the City believes that the public interest is better served by allowing the City to continue directing its resources toward important projects to reduce combined wastewater outflows and overflows in the CWCS, as noted above.

For these reasons, the City is opposed to any of the SRF Policy revision options described in the Board's May 1 Notice that would continue to assess monetary penalties for a loan recipient's failure to file a timely certification (Options 4, 5, 7), because there are no substantive consequences resulting from the loan recipient's failure to make a timely filing that are sufficient to justify a monetary penalty in any amount. Further, as noted in the Board's Notice, the legality of monetary penalties in this context is questionable, at best.

The City would support Option 6, completely eliminating the SRF Policy penalty provision, as this apparently would be consistent with the policy in place in the three other States contacted by Board staff. However, if complete removal of these provisions is deemed inappropriate by the Board, the City believes that the best alternative presented in the May 1 Notice is Option 3, to implement an administrative procedure to bring recipients into compliance. As noted in the Notice, this is consistent with the way the SRF Program is administered, and the ultimate threat of terminating a loan should provide more than adequate incentive for loan recipients to comply

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in a timely fashion. As noted above, when the City was notified by Board staff that its project performance certification had not been filed, the City promptly corrected this oversight, and we would expect any other loan recipient to do the same.

The City also would not be opposed to the adoption of Option 2, preferably in conjunction with the adoption of Option 3. However, if Option 2 is adopted, a clarification is needed: As written in the May 1 Notice, this option could be interpreted to require a hold on processing pending or future loan or grant applications, and, if applicable, payments on existing loans and grants, until a loan recipient's certification requirements are met, even if the date for filing such certification has not yet arrived. We assume that the intention of this option is to provide for such a hold on application processing and payments only if the recipient of an existing loan is delinquent in filing a required certification or report. The City requests that this be clarified if Option 2 is adopted.

The City does not support Option 1, which would retain 2.5% of the total loan balance until all required post-project certifications and/or reports are submitted. Depending on the size of the loan, 2.5 % of the loan amount could be a substantial sum, and delaying disbursement of this amount for 12 to 15 months after completion of the project funded by the SRF loan – well after final payments have been made for design and construction of the project - could raise a significant funding problem for the loan recipient, which runs counter to the purposes of the SRF loan program. In view of the effective and reasonable measures presented in Option 3, and, if necessary, Option 2, we do not believe that Option 1 is justified or necessary to achieve the Board's goal of receiving timely documentation of the successful operation of the SRF projects funded by the Board.

The City appreciates the opportunity to submit these comments. Please be assured that the City takes seriously the requirements identified in the SRF loan agreements and is committed to complying with all requirements in the future.

Respectfully submitted,



Gary A. Reents
Director of Utilities

Cc: Tam Dudoc, Chair, State Water Resources Control Board
Gary Wolff, P.E., PhD, Board Member
Dorothy R. Rice, Board Member
Arthur G. Baggett, Jr, Board Member
Charles R. Hoppin, Board Member
Frances Spivy-Weber, Board Member



VALLEJO SANITATION &
FLOOD CONTROL DISTRICT

450 Ryder Street
Vallejo, California 94590
phone 707-644-8949
www.vsfcd.com

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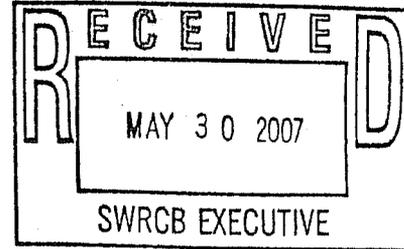
Anthony Intintoli, Jr.
Gary Cloutier
Stephanie Gomes
Tony Pearsall
Gerald Davis
Tom Bartee
Hermie Sunga
John Silva

DISTRICT MANAGER

Ron Matheson

7/17/07 BdMtg
SRF Policy
Deadline: 5/30/07 Noon

Ms. Song Her, Clerk of the Board
State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814
May 24, 2007



COMMENT LETTER – SRF POLICY

The Vallejo Sanitation and Flood Control District (VSFCD) is one of six agencies facing fines for late submittal of the Project Performance Report (PPR) for a State Revolving Fund (SRF)-funded project. This letter is in response to the Notice of a Proposed Amendment to SRF Policy with respect to these fines. The deadline for comments is May 30, 2007. The State Water Resources Control Board (SWRCB) has scheduled this issue for its July 17, 2007, meeting. VSFCD respectfully submits the following comments for SWRCB's consideration.

VSFCD has been notified of fines which may exceed \$1.5 million for Loan Number C-06-4790-110 because a Project Performance Report was submitted 112 days late.

The above loan was for three distinct projects: the Sears Point Storage Tank Project, the Mariposa Street Sewer Improvement Project, and the Fourth Clarifier and Wet Weather Enhancement Project.

In a letter dated September 21, 2006, to Mr. Christopher Stevens of the Division for Financial Assistance, we provided a completion date of January 14, 2005, for the Sears Point Project. The date in the Division's files was wrong. The PPR for this project was submitted on January 25, 2006.

The Fourth Clarifier Project is not subject to a penalty. The PPR was submitted in a timely manner.

The Mariposa PPR was sent on April 19, 2005. The project was completed on December 12, 2002, but the SRF loan proceeds were not received until January 2005. Apparently the 112 days elapsed between January and April of 2005.

The following mitigating circumstances should be considered with respect to the Mariposa penalty:

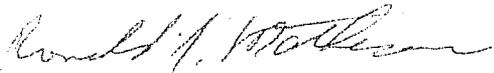
- The Mariposa Project was limited to gravity sewer construction. As such, the PPR is largely devoid of relevant information. The sewer is functioning and has been included in VSFCD's routine cleaning and inspection schedule.

- According to SRF rules, the PPR for this project was due one year after completion of the project. It was not prepared because the loan proceeds were received more than two years after project completion. VSFCDD did not consider it appropriate to submit a PPR prior to disbursement of the loan proceeds and was not aware that penalties started to accumulate upon disbursement of.
The Mariposa Project comprises only about \$500,000 of the total loan amount of \$13.8 million. Clearly, a penalty amounting to approximately triple the loan proceeds would be excessive for any infraction.
- The Division for Financial Assistance has the three PPRs for the projects funded by Loan Number C-06-4790-110 on file. The delay in submitting one of the PPRs did not cause any hardship to Division staff, and no Waters of the State were negatively impacted.

Due to the above circumstances, VSFCDD concludes that the penalties are inappropriate. VSFCDD agrees with the staff recommendation which essentially waives the penalties. However, VSFCDD's approval of the staff recommendation comes with the implied understanding that there will be no impact on any outstanding SRF loans because all required PPRs have already been filed. VSFCDD assumes that there will be no delay in processing our South Interceptor Project Loan (Number C-06-4790-120).

Incidentally, the Completion of Construction date for the South Interceptor was January 24, 2005. At this time, we have not submitted a Project Performance Report. We will submit the report shortly after receipt of the funds.

VALLEJO SANITATION AND FLOOD CONTROL DISTRICT



RONALD J. MATHESON
District Manager

Ex. 211