



Tri-TAC

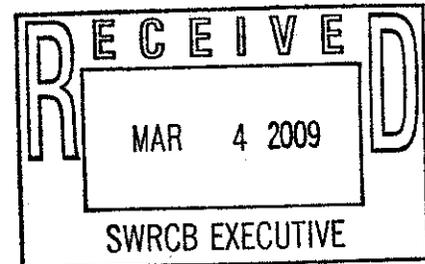
Jointly Sponsored by:
League of California Cities
California Association of Sanitation Agencies
California Water Environment Association

Reply to: 813 Sixth Street, Third Floor
Sacramento, CA 95814
(916) 446-7979
blarson@somachlaw.com

March 4, 2009

Via Electronic & U.S. Mail

State Water Resources Control Board
1001 "I" Street, 24th Floor
Sacramento, CA 95814
Attention: Ms. Jeanine Townsend, Clerk to the Board
commentletters@waterboards.ca.gov



**SUBJECT: Proposed Amendment to the Policy for Implementing the CWSRF—
March 17, 2009 Board Meeting**

Dear Ms. Townsend:

The California Association of Sanitation Agencies (CASA) 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 (SRF Policy)*. 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 and CASA serve most of the sewered population in California.

It is our understanding that some of the proposed changes to the SRF Policy result from the process undertaken by the State Water Board staff to ensure that the SRF is an attractive funding source to potential participants and that many of the proposed changes were recommended by the Stakeholder Advisory Group. As such, we are hopeful that the majority of the changes will improve the functioning of the program and the attractiveness of it to participants.

Jeanine Townsend, SWRCB

Re: Proposed Amendment to the Policy for Implementing the CWSRF

March 4, 2009

Page 2

In particular, we agree that the following major changes may be beneficial to the program:

- Addition of financing for planning activities to promote future projects;
- Realignment of the construction financing approval process to simplify and speed up the financing agreement approval process;
- Implementation of a two-tiered environmental review process; and
- Implementation of several modifications or new provisions that will make participation in the SRF program more attractive for small, disadvantaged communities.

We do have several areas of concern with the proposed changes to the SRF Policy, and recommendations for modifications to address those issues, which are described below:

1. Section VIII A-G: Approval of Planning Financing

As noted above, this appears to be a positive step in that planning activities will be eligible for funding, which may be especially important for smaller agencies. However, the requirements of this section appear to be excessive in comparison to the magnitude of the funding likely to be awarded for planning purposes (thousands of dollars, rather than millions). Therefore, the risk to the integrity of the SRF is relatively small if an agency were to be unable to pay back its loan. Instead of the proposed approach, we recommend that a lower level of scrutiny be applied involving a review of the agency's most recent audited financial statement, which should be adequate documentation that the agency will meet the terms and conditions of the financing agreement. The other requirements that are applied for construction financing agreements are unnecessary and should be deleted.

2. Section IV.A.2 — Development of Regional Water Board Recommendations

The development of the Statewide Project Priority List (Statewide List) has been a long-standing part of the SRF program and has always involved the input of the Regional Water Boards. We believe that the involvement of the Regional Water Boards is important to the process and should continue. We are concerned, however, that the proposed policy expands this involvement to state, "[t]he Division shall not place a Project on the Statewide List unless the Regional Water Board Executive Officer concurs," without providing any criteria under which the Executive Officer may reasonably decline to concur. We would recommend that this provision be removed from the proposed policy, or, at a minimum, the proposed SRF Policy be amended to state that: "The Regional Water Board Executive Officer may deny the inclusion of a Project on the Statewide List for good cause. Such denial shall be in writing and include an explanation

Jeanine Townsend, SWRCB

Re: Proposed Amendment to the Policy for Implementing the CWSRF

March 4, 2009

Page 3

of the grounds for the denial." A provision should be added to allow an agency to appeal a denial to the State Water Board Executive Officer.

3. Section X.H — Effective Date

The current SRF Policy excludes from reimbursement construction costs incurred prior to final plans and specifications approval. The proposed SRF Policy would revise the cut-off date to the date specified as the beginning of the financing agreement. While this change is acceptable to us, the proposed SRF Policy goes on to state that equipment procurement would be excluded. Because of the extraordinary lead-time for procuring certain pieces of equipment (e.g. turbines for energy production using digester gas), such a requirement could unnecessarily delay the implementation of vital water quality protection, and in the context of the American Recovery and Reinvestment Act (ARRA), could delay realization of the job creation benefits envisioned by Congress. We recommend that the SRF Policy not be amended to limit the date of procurement, and instead state that agencies must wait for reimbursement until a financing agreement is reached and that agencies will assume the risk if no financing agreement is ever reached.

4. Section X.I — Expiration Date(s)

The proposed SRF Policy states, "[f]inancing agreements may include appropriate expiration dates." The intent of this new provision is unclear. From discussions with State Water Board staff, it appears that the primary intent of this section was to create a time limit between the issuance of a financing agreement and the time construction occurs, to ensure that projects actually get built and that SRF monies are not unnecessarily tied up. We concur with this intent, but believe the policy should clearly state this. Accordingly, we also recommend that this section of the proposed SRF Policy be modified to allow more flexibility for extensions for good cause than is currently provided (i.e. do not limit extensions to only one 120-day extension, but instead leave some flexibility for staff in case circumstances arise that might justify a different length of time or an additional extension).

Comments Related to American Recovery and Reinvestment Act Funding

We understand from State Water Board staff that several proposed changes to the SRF Policy are aimed primarily at implementation of ARRA. Your staff has told us that the framework for implementation of the ARRA will be contained in a Resolution and the Intended Use Plan, both of which will be released in the near future. In the meantime, they have shared certain elements of the proposal with us.

Based on this preliminary information and the changes being made to the SRF Policy related to ARRA implementation, we offer the following policy recommendations about ARRA implementation for your consideration:

Jeanine Townsend, SWRCB

Re: Proposed Amendment to the Policy for Implementing the CWSRF

March 4, 2009

Page 4

In order to have maximum beneficial impact on the economy and job creation, 100% of the funding provided to California under the ARRA should be provided with full or partial "additional subsidization" such as grants, principal forgiveness, or negative interest rates (provided that state law is able to be modified in a timely manner to allow these forms of subsidization). CASA and Tri-TAC recognize that maximum economic benefit may be achieved by using partial subsidization for at least some project awards (e.g. enter into a loan financing agreement that includes forgiveness for a specified number of years (for instance, 5 years) or specifies that a certain percentage will be a grant (for instance, 25 or 50 percent) and the rest will be a loan). CASA is prepared to work with the Administration and the Legislature to modify state law to allow the flexibility in the SRF Program to fully implement the "additional subsidization" provisions contained in the ARRA.

To the extent allowed under state and federal law, repayments and other monies in the SRF program should be made available with additional subsidization during the current period of economic challenges. It is our understanding that staff intend to propose that all SRF loans not included in the Green Infrastructure or "economically challenged community" subsidization categories be offered as very low interest (e.g. 1%) loans. We support this and other means of providing additional subsidies with SRF funding.

It is our understanding that the staff's recommendation will target additional subsidization to disadvantaged communities, as that term is defined in the SRF Policy, but without the population threshold requirement. While we support making funds available to disadvantaged communities, we are concerned that this approach may not yield the job creation impacts intended by Congress as it is unlikely there will be sufficient "ready to proceed" projects that can meet the disadvantaged community definition and meet all of the requirements of the ARRA in a timely manner. Instead, we recommend that the additional subsidization be provided to communities throughout the state that are defined as "economically challenged." The criteria for determining whether a community is "economically challenged" should be based on common sense, be based on timely information, and be based on easy to obtain data. For example, the Water Code provides that financial hardship for purposes of the Mandatory Minimum Penalty law be determined after consideration of a range of factors, including median household income, rate of unemployment, or low population density in the service area. Given that the purpose of ARRA is job creation, it would seem that unemployment data would be a good indicator, and all communities that are at or above the statewide average unemployment rate, or communities where unemployment has risen significantly in the last 12 months, such as a 5 percent or more increase, should qualify. Within that, if there are a large number of ready-to-proceed projects that can meet the requirements of the ARRA, then the State Water Board should allocate the funding equitably on a regional basis (e.g. roughly proportional to population).

Jeanine Townsend, SWRCB

Re: Proposed Amendment to the Policy for Implementing the CWSRF

March 4, 2009

Page 5

We understand that in order to ensure that California is able to disburse the funds within the 120 day timeframe, some ARRA funding may be made available to projects previously awarded grant funding from state bonds (e.g. Prop. 40 or Prop. 50) for which funding is currently frozen and work has been stopped. While this idea may have merit, we have some basic questions about how this proposal would work in practice and what the impacts would be on the availability of ARRA funding for other projects that qualify for SRF funding:

1. Will funding only be provided to those bond-funded projects that also meet the criteria for ARRA funding under the SRF?
2. Will those projects have to meet other SRF requirements?
3. When the bond funding once again becomes available, will projects that would otherwise have been eligible for ARRA funding be able to be funded with the bond funding? If so, will there be additional requirements project proponents have to meet?

Because of the extremely short deadlines for obligation of ARRA funds by States, we strongly urge you to direct the Executive Director to suspend one or more of the requirements for entering into construction financing agreements so that it will be possible for the State Water Board to enter into funding agreements to obligate all of California's ARRA funding in a timely manner. We recommend that the requirements for design document review and/or the credit worthiness review be suspended.

We appreciate the changes being proposed to the SRF Policy to allow projects to be added to the Priority List when necessary, to streamline the environmental review process and to delegate authority to the Executive Director to waive the requirements of the SRF Policy in order to comply with the ARRA. Because there may also be additional requirements that ARRA funding recipients must meet (e.g. Buy American requirements), we recommend that the proposed new sentence that currently states "The Executive Director may waive the requirement of this Policy in order to comply with the American Recovery and Reinvestment Act of 2009" be modified to read "The Executive Director may ~~waive~~ *modify* the requirements of this Policy in order to comply with the American Recovery and Reinvestment Act of 2009."

We understand that the State Water Board faces many challenges to implement the ARRA in a compressed timeframe and with a number of issues unresolved (such as a lack of federal guidance to date on the Buy American provisions). CASA and Tri-TAC are committed to working with the State Water Board and the Administration to make implementation of the ARRA in California a success, and to ensure that California successfully awards all of its allotment of ARRA funds to projects that are under contract or under construction by February 2010. We look forward to reviewing and commenting on the proposed Resolution and Intended Use Plan as they relate to ARRA implementation.

Jeanine Townsend, SWRCB

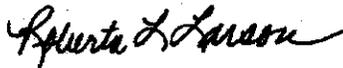
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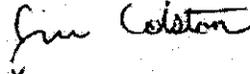
Page 6

If you have any questions about our position and recommendations, please contact Bobbi Larson, Director of Regulatory and Legal Affairs, CASA at (916) 446-7979 or blarson@somachlaw.com or Sharon Green, Chair, CASA Workgroup on 2009 Economic Stimulus Funding, at (562) 908-4288, x-2503 or sgreen@lacs.org. Thank you for your consideration of our comments.

Sincerely,



Roberta L. Larson
Director, Legal and Regulatory Affairs
CASA



Jim Colston
Chair
Tri-TAC

cc: CASA Executive Board
CASA Workgroup on 2009 Economic Stimulus Funding
Catherine Smith, CASA Executive Director
Mike Dillon, CASA State Legislative Advocate
Eric Sapirstein, CASA Federal Legislative Advocate