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Secretary for  
Environmental Protection

# State Water Resources Control Board

## Division of Financial Assistance

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Arnold Schwarzenegger  
Governor

## NOTICE OF PUBLIC WORKSHOP

### PROPOSED AMENDMENT TO THE WATER RECYCLING FUNDING PROGRAM GUIDELINES TO CLARIFY ELIGIBLE COSTS AND LITIGATION RIGHTS

The State Water Resources Control Board (State Water Board) staff is requesting comments on proposed amendments to the Water Recycling Funding Program Guidelines (Guidelines). A public workshop will be held for the purpose of presenting the proposed amendments and their purpose and receiving public comments. In addition, comments may be submitted in writing. We expect to present the amended Guidelines to the State Water Board for approval in July 2008, at which time there will be opportunity for additional public comments. The location and time of the workshop are provided below:

May 15, 2008  
9:00 AM – 12:00 PM  
California Regional Water Quality Control Board, San Diego Region  
Regional Board Meeting Room  
9174 Sky Park Court, Suite 100  
San Diego, CA

Written comments should be submitted by 5:00 PM on May 17, 2008, to Claudia Villacorta [cvillacorta@waterboards.ca.gov](mailto:cvillacorta@waterboards.ca.gov) or may be submitted to:

Claudia Villacorta  
Water Recycling Funding Program Manager  
Division of Financial Assistance  
California State Water Resources Control Board  
U.S. Postal Service Mailing:  
P.O. Box 944212  
Sacramento, CA 94244-2120  
or  
Courier or hand delivery:  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95814

## BACKGROUND

The Division of Financial Assistance (DFA) of the State Water Board administers the Water Recycling Funding Program (WRFP). This program provides state funds for loans and grants to agencies for planning and construction of water recycling projects. The WRFP is funded by bonds approved by voters in 1984, 1988, 1996, 2000, and 2002 as well as the State Revolving Fund Loan Program. The Guidelines, which govern the WRFP, were last revised on October 21, 2004. Amendments to the Guidelines are proposed to clarify the original intent of the

*California Environmental Protection Agency*

Guidelines regarding eligible costs and conforming of the Guidelines to a previous decision of the State Water Board regarding waiver of litigation rights.

### Eligible Costs

Loans and grants for construction of water recycling projects can be used for wastewater treatment, recycled water pump stations, recycled water storage, and recycled water distribution pipelines. There are restrictions on facilities that can be funded based on provisions in the bond laws, state and federal restrictions on the use of general obligation bond funds, and policies established by the State Water Board set forth in the Guidelines. During the course of administration of the WRFP, DFA has determined that the Guidelines are unclear regarding the types and locations of facilities that are eligible for funding, the ownership of funded facilities, and the expected types of rights-of-way for funded facilities. It is necessary to amend the Guidelines to clarify these items to maintain consistency in interpretation and conformance to bond laws and laws and regulations governing the use of bond funds. The proposed amendments are not intended to establish new policy but rather to clarify the original intent of the Guidelines and conform to current understandings of restrictions on bond law funds.

The proposed changes are in Section III.I, which addresses eligibility criteria, and are shown in Exhibit A. The amendments can be summarized as addressing four issues:

1. Types of facilities: The intent of the WRFP has been to facilitate the treatment of wastewater to acceptable quality for reuse and the distribution of recycled water from treatment facilities to the use sites. The WRFP has not funded facilities on use sites that would distribute the recycled water within the site or would be used for the actual application of recycled water, such as irrigation facilities. The objective is to replace the source of water supply from potable or other fresh water to recycled water, making the displaced fresh water available for other uses. The amendments clarify both the extent of facilities that can be funded as well as the types of facilities, that is, treatment, pump stations, storage, and distribution pipelines, and meters at the property lines of the use sites.
2. Locations of facilities: Treatment and storage facilities can be located anywhere between the source of the wastewater and the use sites, depending on topography, available land, and cost-effectiveness. It is becoming more common for tertiary treatment facilities to be located separately from the secondary treatment plant. Storage has to be located at suitable elevations in relation to the distribution system. At times, it is best to locate treatment and storage facilities adjacent to or on a use site. The amendments clarify that locating loan or grant-funded facilities on a use site is considered acceptable as long as they serve the function of the overall recycled water system.
3. Ownership of facilities: The 1984, 1988, 1996, and 2000 bond laws restrict funding to public agencies. To maintain the public interest in the facilities, the DFA has required that state-funded facilities remain in public ownership and that the State Water Board authorize transfers of ownership. This concept is explicitly stated in the amendments to the Guidelines. The 2002 Bond Law (Proposition 50) funds can be provided to privately owned water utilities and ownership must remain with the funded utilities unless transferred to a public agency.

4. Rights-of-way: To protect the public interest in state-funded facilities to construct, operate, and maintain them, the amendments clarify that facilities must be located on land with adequate rights-of-way for the useful life of the project.

#### Waiver of Litigation Rights

The Guidelines currently state that acceptance of grant funds constitute a waiver of litigation rights to challenge any State Water Board or Regional Water Quality Control Board (Regional Water Board) regulation or order. In February 2006, the State Water Board considered this provision and approved a change that does not restrict litigation rights but prevents the use of grant funds to pay costs associated with any litigation against the State Water Board or any Regional Water Board. The proposed amendment would reflect the February 2006 decision.

#### **DOCUMENT AVAILABILITY**

The current and future notices and related documents on this subject will be posted on the [State Water Board Water Recycling Website](#).

Interested parties may [subscribe to an e-mail list](#) for future notifications about the Water Recycling Funding Program. To subscribe, enter your email address and name, then select the "Water Recycling Funding Program" option.

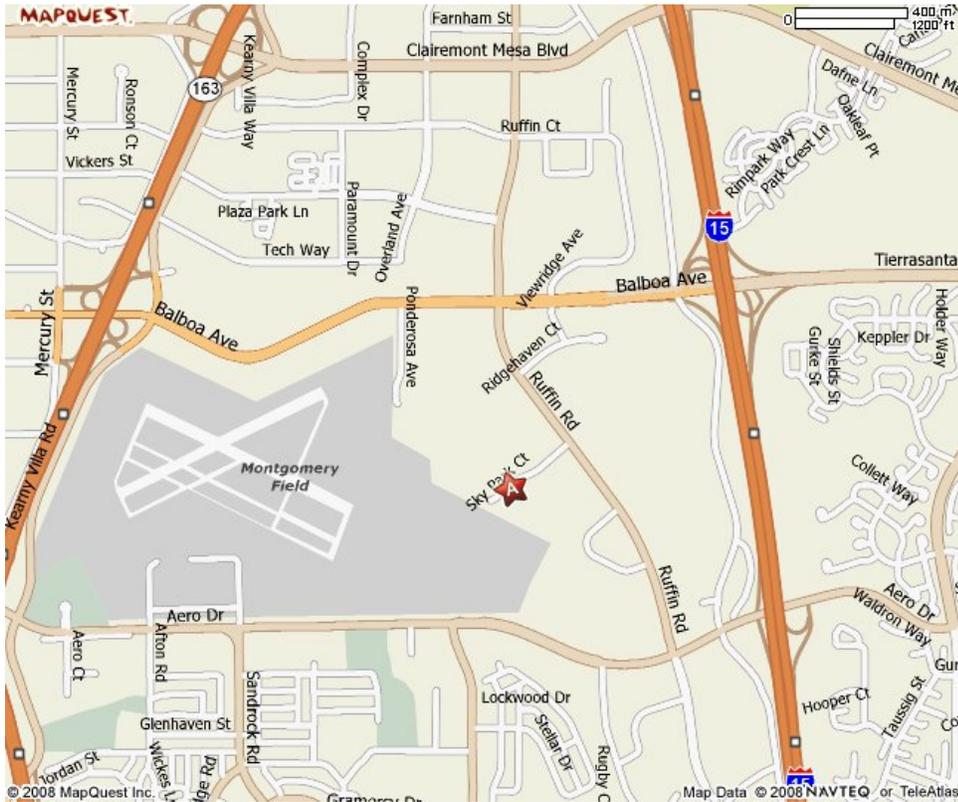
#### **ORAL COMMENTS**

While the workshop is intended to be informal, time limitations on oral presentations may be imposed.

#### **DIRECTIONS, PARKING AND ACCESSIBILITY**

From Downtown: I-15 north - take the Aero Drive exit - turn left (west). Proceed to the third stoplight, which is Ruffin Road - turn right. Turn left on Sky Park Court (stoplight). Our building is located at the end of the court - veer to the right into the parking lot.

From the North: I-15 south - take the Balboa Ave. exit - turn right (west). Proceed to the second stoplight, which is Ruffin Road - turn left. Turn right on Sky Park Court (stoplight). Our building is located at the end of the court - veer to the right into the parking lot.



Individuals who require special accommodations are requested to contact (916) 341-5881 at least five working days prior to the meeting date.

#### **ADDITIONAL INFORMATION**

Please direct questions about this notice to Richard Mills at (916) 341-5739 or [rmills@waterboards.ca.gov](mailto:rmills@waterboards.ca.gov).

**EXHIBIT A  
PROPOSED AMENDMENTS TO THE WATER RECYCLING FUNDING PROGRAM  
GUIDELINES**

1. Amend Section I.E.4. Waiver of Litigation Rights as follows:

4. Waiver of Litigation Rights:

~~Grant agreements funded by the SWRCB will specify that acceptance of grant funds constitutes a waiver of litigation rights (including pending actions) to challenge any SWRCB or Regional Water Quality Control Board (RWQCB) regulation or order, which is reasonably related to the purpose of the grant.~~

Grant agreements funded by the SWRCB will specify that under no circumstance may a Grantee use funds from any disbursement under the grant agreement to pay costs associated with any litigation the Grantee pursues against SWRCB or any Regional Water Quality Control Board (RWQCB), regardless of the outcome of any such litigation, and notwithstanding any conflicting language in the grant agreement, the Grantee agrees to complete the Project funded by the grant agreement or to repay the grant funds plus interest.

2. Amend Section III.I.1. Eligible Criteria as follows:

1. Eligible Costs

The following items are eligible for funding:

a. Construction cost of recycled water recycling treatment, storage, pump stations, and distribution pipeline systems, provided that: ~~SRF funded facilities must remain in public ownership.~~

- Facilities are located as appropriate to serve best the function of the funded recycled water system, including on a use site.
- Facilities remain in public ownership. For privately owned water utilities receiving grant funds from Proposition 50, funded facilities must remain in the ownership of the utility contracted to receive the state funds. Transfer of ownership to an entity other than the recipient of the state funds must be to a public agency as authorized by the State Water Board.
- Facilities are located on land with adequate rights-of-way for the useful life of the project.

b. Recycled water distribution pipeline systems, from the source of supply to the reuse sites. Eligibility of a pipeline system on the user's property is limited to:

- Recycled water service line up to and including the water meter if the meter is located in the proximity of the property line.
- Recycled water service line to the main storage facilities serving the user on the reuse site or, to the initial division of the recycled water flow on the use site to multiple use areas.

- c. Recycled water distribution pipeline with a terminal point serving a user that is committed by mandatory use ordinance or by user contract to take recycled water. If only a portion of a pipeline serves users secured by a firm commitment, then eligibility extends to the most downstream user secured by a commitment.
- d. The capacity of a project used within ten years of completion of construction. Pump station wet wells and pipelines may have an eligible capacity of up to 20 years when documented by a market assessment showing the 20-year service area, and corresponding uses, and flows.
- e. Reasonable costs to provide an emergency backup water supply for the recycled water system.

Eligible capacities are measured in terms of annual recycled water deliveries determined by recycled water market assurances. At least 50 percent of the eligible project capacity must serve users that will exist by the time of completion of construction. ("Existing user" is defined in Appendix H.)

Eligible sizes of facilities components are based on reasonable design criteria to serve these annual deliveries. Eligible costs for partially eligible capacity will be determined on an incremental cost rather than pro rata cost basis.

Applicants constructing pipelines or treatment facility capacity, in excess of that which can be utilized within five years of completion of construction, must demonstrate that adequate recycled water supply and demand will be available to support that future capacity.

### 3. Amend Section III.I.2. Ineligible Costs as follows:

#### 2. Ineligible Costs

The following costs are not eligible for construction funding:

- Costs of planning for a project;
- Costs of applying for funding;
- Costs of on-site retrofit facilities, that is, facilities to convert to recycled water use;
- Costs of on-site irrigation facilities;
- Costs of land, easements, and rights of way;
- Costs for operation and maintenance of project facilities;
- Legal and court costs resulting from violation of state and federal laws or as a result of the CEQA process, excluding the cost of capital facilities required to be built as a condition or result of a legal or court settlement;
- Indirect costs of construction performed by the funding recipient's work force.<sup>1</sup>

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<sup>1</sup> A more detailed discussion of force account cost eligibility may be found in Appendix C "Guidelines on Force Account Eligible Costs."