



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

Via Electronic and U.S. Mail

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August 29, 2005

Arthur G. Baggett, Jr., Chair and Members
State Water Resources Control Board
1001 I Street, 24th Floor
P.O. Box 100
Sacramento, CA 95812-0100

ATTN:Debbie Irvin, Clerk to the Board
dirvin@waterboards.ca.gov

SUBJECT: Proposed Amendment of the Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities: State Water Resources Control Board Workshop, Sept. 7, 2005, Agenda Item 5

Dear Chairman Baggett and Members:

Tri-TAC and the California Association of Sanitation Agencies (CASA) appreciate the opportunity to provide comments on the proposed amendment of the Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities. Tri-TAC is a technical advisory group 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. Tri-TAC and CASA plan to participate in the September 7, 2005 workshop and provide testimony regarding the proposed amendment.

Since its inception in the 1980s, Tri-TAC and CASA have maintained a long-standing interest in the State Revolving Fund (SRF) Loan Program and have continued as an active liaison with the SWRCB and its staff regarding funding issues and policies under which loans may be issued. As a consortium of cities and special districts

mandated with the goal of protecting the environment and public health and safety, we support the SWRCB's goal of making the sustainability of California's water resources one of its core values. To the extent that the purpose of the State Water Board's sustainability initiative is to foster greater cooperation among local and state agencies with different duties and perspectives in order to promote sustainable use of water resources, we support that as well. However, we are concerned about how the goal of promoting sustainability of water resources will be translated into requirements within the SRF program. Unintended consequences may occur if the sustainability net is cast too broadly without keeping in mind the primary purpose of the SRF, which is to fund projects that protect water quality in California.

To that end, we offer the following comments on and proposed changes to the proposed amendment to the SRF policy:

1. Change the definition of "Sustainability" to "Sustainability of Water Resources."

We recommend that the proposed definition of "Sustainability" be deleted and replaced with the definition included below. This change conforms with the adopted core value as stated in State Water Board Resolution No. 2005-0006. Additionally, this change is more consistent with the scope of the State Water Board's legal authority (*see e.g.* California Water Code Section 174, stating that the Water Board was established to provide for the orderly and efficient administration of the water resources of the state), as well as with the purview of our member agencies, especially special districts that, by definition, have limited responsibilities and authority. Expanding the definition of sustainability beyond water resources leads the Water Board and applicants for SRF funding to areas that exceed their responsibilities and legal authority.

Proposed definition:

"Sustainability" means balancing economic, environmental and social factors to maintain and protect the water resources of the State of California."

2. Clarify that Sections IX.A and IX.D are informational only.

Our member agencies do not object to providing the required information to the State Water Board staff as part of the facilities planning process. We are concerned, however, that this amendment may be merely a "first step," and that under the guise of promoting sustainability, the SRF program could be used in the future to try to shape the content and direction of General Plans, including the "housing" and "land use" elements. There is concern that any attempt to shape the content and direction of General Plans would infringe upon the local authority of cities and counties, which are the agencies responsible for land use planning at

the local level. This is particularly worrisome for special districts as they do not adopt General Plans nor can they compel cities or counties to adopt and/or modify specific provisions within their General Plans. If the State Water Board does contemplate further changes to the SRF program (or other programs, for that matter), we strongly recommend that a process be developed for working with local agencies to develop an approach that appropriately recognizes local authority for land use planning.

A second concern relates to special districts that serve multiple cities. Not only is it unclear with which jurisdiction a project applicant must certify consistency (because many wastewater facilities are regional in nature and serve multiple jurisdictions), but, if the proposed amendment is more than informational, a minority of the cities within a special district could hold hostage that special district if the project for which funding is being sought is deemed to not be consistent with the "land use" and "housing" elements in those jurisdictions, even if a majority of jurisdictions do find it to be consistent. This would potentially have the unintended effects of delaying worthy projects for protecting water resources and making them more expensive (causing a potential economic hardship on the rate paying customers). Such a consequence would be the exact opposite of the stated definition of "Sustainability".

To address this, we proposed to add the following at the end of Section IX.A, #11:

"The description provided in this section is for information purposes only and shall not affect the existing SRF Policy regarding the priority rankings or eligibility of funding."

We are pleased that the State Water Board will soon be funding loans again. To ensure that the SRF Policy is clear and does not have unintended consequences that could affect timely project funding, we recommend that you make the changes described above to the proposed amendment to the SRF Policy. Thank you for consideration of our comments.

Sincerely,



Roberta L. Larson
Director, Legal & Regulatory Affairs
CASA



David B. Bruns
Chair, Finance Subcommittee
Tri-TAC

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cc: Celeste Cantu, Executive Officer, SWRCB
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