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August 21, 2008

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

SUBJECT: State Revolving Loan Fund Policy

Tri-TAC appreciates the opportunity to provide comment on the State Water Resources Control Board's (SWRCB) State Revolving Loan Fund policy. Tri-TAC supports the SWRCB's efforts to improve the policy. The following comments and proposed edits are offered for your consideration.

1. Introduction (page 1) — The second paragraph states that the new policy will apply to all projects that receive facilities plan approval after September 2, 2008. There are a few projects that have submitted completed funding applications, which meet all of the requirements under the existing policy, but have not yet received facilities plan approval nor a preliminary funding commitment. The policy, as proposed, would obligate the SWRCB staff to reject these completed applications and force those few applicants to jump start the whole process over again by requiring them to amend their facilities plans and hold additional public hearings. This could cause a few critical projects to be delayed, inadvertently resulting in agencies missing mandate compliance schedules. It is recommended that the policy be changed to "The requirements contained in this amended CWSRF Policy apply to all Projects for which a completed Funding Application has not been submitted to the Division of Financial Assistance (Division) prior to the amendment of this policy."

2. "House Lateral" (page 3) — The definition for house lateral, as written, only applies to residential structures and not commercial or industrial structures. In Section IX.G.2.c (page 23), house laterals are ruled ineligible. Because the definition is specifically limited to residential structures, someone could infer that it is the intent of the CWSRF Program to fund laterals for commercial and industrial structures. Thus, it is recommended that the definition of house laterals be expanded to read ". . . the sewer pipe from the public right-of-way to the residential, commercial, institutional, or industrial structure."

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3. "USEPA" (page 8) — Section IV.E.3 uses the acronym "USEPA" for the first time. Although it is clear what agency this is in reference to, since the definition of "EPA" was deleted from the proposed policy, for clarity, amend the sentence to read ". . . by the United States Environmental Protection Agency (USEPA)."

4. Funding of Projects (page 8) — Section IV.F states that, if insufficient funds are available, the project that most effectively addresses global climate change shall be funded first. This could imply that a project that addresses global climate change but does very little to address water quality issues could trump a project that focuses on public health problems or the pollution of impaired water bodies. Although the issue of global climate change is important and should be addressed, the focus of the CWSRF should still be on water quality issues. It is recommended that the last sentence be amended to read, "If insufficient funds are available for all projects seeking funding and the water quality benefits between two projects are judged as equal, then the project that most effectively reduces green house gas emissions shall be funded first." Additionally, the phrase "most effectively addresses" is vague. Consideration should be given to whether or not the understanding of these issues has matured to the point that staff is able to make these determinations.

5. Local Match (pages 9, 10) — Throughout this Section, the terms "state match," "local match," and "state share" are used interchangeably and often in a confusing manner. In the first paragraph, the 20 percent of the federal Capitalization Grant is designated as the state match. In the next sentence (and elsewhere), it is referred to as the state share. Consistency would argue that it should be referred to as the state match throughout since that is the designated term. The situation is further confused by then calling this type of financing "local match" financing because it loses the nexus to the fact that it is the state match that is being provided by the recipient.

   In Subsection V.B (Terms) the financing is referred to as "state match financing." If the terminology from the introductory paragraph to Section V is to be used, the first sentence in Subsection B should be amended to read, "The interest rate on local match financing agreements shall be zero (0) percent." Also, Subsection B goes on to say that the principal amount of the financing includes the "amount received from the State Water Board and the local match amount contributed by the local agency." Based on the terminology of the introductory paragraph, the local agency contributes the state match, not a local match.

   SubsectionV.C.3 states, "The Division will authorize the disbursement of the state share . . . ." Since this is a local match loan, the local agency is contributing the state share. There is no disbursement of the state share on the part of the Division.

6. Section V.B, Terms (page 9) — This section implies that the local match financing provisions are available for extended term financings. Since the interest rate on these financings is defined to be zero (0), extending the repayment period on this type of financing has the added effect of significantly lowering the effective interest

rate (essentially contributing the state match acts as prepaid interest). This alone would argue against offering local match extended financings. Although it is a little unclear as to who can qualify for an extended term financing, the intent seems to be that extended term financings will only be offered to disadvantaged communities. If a community has the financial resources to be able to contribute the state match, it seems unlikely that it would qualify as disadvantaged and thus, could never qualify for an extended financing under the local match provisions. Consequently, it is recommended that the local match financings be limited to 20 years under all conditions.

7. Refinancing (page 10) — The first paragraph in this Section clearly states that it only applies to disadvantaged communities. The second paragraph is somewhat ambiguous as to whether it applies to all communities or only disadvantaged communities in that it simply uses the term "recipients." Since any community, disadvantaged or not, may have to use short-term financing to cover the gap between the time of final plan and specification approval and execution of a financing agreement, the global usage seems more applicable. The second paragraph should be amended to read, "Any recipient, not just disadvantaged communities, that has relied on short-term or bridge financing . . ." to clear up this potential ambiguity.

8. Section IX.A.10.b Biochemical Oxygen Demand (page 13) — In lieu of requiring applicants to use BOD, they should be given the choice of using BOD or chemical oxygen demand (COD). It is recommended that the wording be amended to read, ". . . peak flows, daily Biochemical Oxygen Demand (BOD) or Chemical Oxygen Demand (COD) loadings, daily suspended solids . . . ."

9. Credit/Legal Review (page 19) — The introductory paragraph states that the Division (presumably its contractor CalMuni) will determine an applicant's creditworthiness and recommend a maximum funding amount. No indication is given as to what criteria will be used for determining creditworthiness and whether the maximum funding limit is based on current user rates, adopted user rates, or future user rates. Presumably, though, the Division will use similar criteria to what the major rating agencies (Standard & Poor's, Moody's, Fitch) use. If, in fact, they are using the same criteria, the Division's estimate of a credit limit should be similar to what other lenders would determine it to be. Thus, it would be nonsensical to assume that an agency could secure additional funding from another lender if the project cost exceeds the credit limit. The only reasonable conclusion that could be reached if this situation arose is that the project is unaffordable for the community and that the project should be scaled back or abandoned. However, if the project is being mandated by the local Regional Water Quality Control Board (RWQCB), the applicant may not be able to reduce the scope of the project. Thus, before an RWQCB imposes new standards or mandates projects, it should be required to conduct an affordability study and scale back the proposed requirements/mandates if it is determined that they are unaffordable.

10. Proposition 218 (page 19) — As written, the policy requires all applicants to provide an opinion from competent counsel as to whether Proposition 218 is applicable. If an applicant is already complying with the requirements of Proposition 218, whether voluntarily or because competent counsel has already made a determination, why is it necessary to obtain another legal opinion? It is recommended that the first sentence be amended to read, "If an applicant is not already complying with the requirements of Proposition 218, the applicant shall provide an opinion . . . ."

    The last sentence states, "If the necessary revenue has not been approved, a preliminary funding commitment will not be approved." In general, the preliminary funding commitment is made prior to the time the applicant begins preparing the final plans and specifications. At that point in time, the cost projection is a rough projection but could change substantially for large projects as the design is finalized, especially given the rapidly increasing costs of raw material (steel and concrete) in today's economy. Thus, it would appear to be more prudent for an applicant to wait to adopt new rates until closer in time to when the design will be complete. Because no drawdown can be made until a financing agreement has been signed, the State Water Board will not have risked any money by giving a preliminary financing commitment. Thus, it is recommended that the last sentence be amended to read, "If the necessary revenue has not been approved, a financing agreement will not be approved."

11. Existing Indebtedness (page 21) — The proposed policy requires that paper copies of relevant debt documents be submitted. While it is understandable why the Division would want to review existing debt documents, it is not clear why paper copies are required, especially given the voluminous size of today's bond documents and supporting supplemental materials. With the emphasis being placed on the environment, reducing waste, and going to a paperless workflow, it seems more prudent to allow applicants to submit electronic copies of their debt documents. Thus, it is recommended that the requirement for paper copies be eliminated.

12. Interest Rate and Service Charge (page 33) — This is the first and only reference to the concept of a service charge. It is not clear what the service charge is or what the money will be used for. Some explanation needs to be added to the policy.

13. Future Local Debt (page 34) — The proposed policy states that all future local debt must be subordinate to the CWSRF debt. It does contain a provision that the Division may, but is not required to, waive this requirement if certain conditions are met. This is very similar to the additional bonds test that most bond issuances require. It seems unwise to make this a discretionary action on the part of the Division without providing any criteria on which the Division will base its decision. It is recommended that the first two sentences be amended to read, ". . . the recipient's future local debt to be subordinate to the CWSRF debt unless all of the following criteria are met: . . ." Another sentence can be added to state, "At no time shall the recipient's future local debt be superior to the CWSRF debt."

14. Effective Date (page 34) — The CWSRF policy clearly states that construction costs incurred prior to the final plans and specifications approval will be ineligible, implying that costs incurred after this date will be eligible. The proposed policy says the effective date "will generally be the date of FP&S approval." Unfortunately, the phrase "will generally be" means that it will often be the case, but not always. In fact, the proposed policy defines that the effective date for purposes of incurring eligible costs as "the date specified in the beginning of the financing agreement." Historically, there has been a significant lag time between final plans and specifications approval and receipt of the financing agreement, meaning that applicants would be at risk by moving forward with their projects after receiving plans and specifications approval. To eliminate this risk and to keep projects moving forward as expeditiously as possible, it is recommended that the last sentence be amended to read, "This date shall be the date of FP&S approval." Alternatively, a new requirement could be added to this section that says the State Water Board shall issue the financing agreement within 45 days of the FP&S approval.

15. Project Performance Certification (page 36) — The last sentence in the first paragraph reads, "A detailed outline . . . can be obtained from the Division." The last sentence of the last paragraph in this Section states, "Further information on the project performance certification is included in Appendix J." It's not clear what additional information is being referenced in the first paragraph but it would seem to make sense to include this information in Appendix J as well.

16. Priority Classes (page 7) — Section IV.C discusses the various priority classifications into which a project may fall. There is some potential confusion as to the proper classification for projects dealing with cleanup of drinking water aquifers. The most appropriate class would seem to be Class B – Pollution of Impaired Water Bodies. However, if the majority of the proposed project involved extracting the groundwater for cleanup and then reusing it, it could be argued that the project should fall into Class C – Compliance with Requirements or Water Recycling Projects. Although Section IV.E.1 addresses this issue from a cost standpoint, consideration should be given to the intended purpose of the project and then place it into the appropriate category.

17. Restrictions and Adjustments (page 8) — Section IV.E.5 authorizes the State Board to create set-asides to assure assistance will be available for select types of projects that are on the fundable portion of the priority list. It's not clear what these set-asides are for, but it seems to defeat the purpose of creating a list. The concern would be that it would allow lower ranked projects to jump ahead of higher priority projects. If so, the policy should amend the priority rankings accordingly.

18. Facilities Planning (page 11) — Section IX lists four elements that must be included as part of the facilities plan: the project report, the environmental documents, the water conservation compliance documents, and the credit analysis documents. While all of these documents are valuable and should be submitted as part of the funding assistance application, the latter two are not directly related to the facilities plan per se and should not be listed as such.

19. Project Report (page 12) — Section IX.A.3 states that the project report must include an evaluation of climate change. Coverage of this topic seems more appropriate for the environmental document.

20. State Planning Priorities (page 15) — Section IX.A.11.d requires applicant to discuss their efforts to encourage sustainable water resources. Examples cited are recycling wastewater, conserving water, conserving energy, and applying Low Impact Development Best Management Practices. All of these goals are important; however, some agencies are legislatively prohibited from engaging in these activities. An exemption should be carved out for these agencies.

21. SHPO Concurrence (page 17) — A common problem in finalizing financial assistance applications has been the inability to secure SHPO concurrence in a timely fashion. While it is important to address cultural resources in the facilities plan, a set time frame should be established such that, if SHPO concurrence is not provided during that period, the documentation prepared by the applicant shall be deemed adequate and complete.

22. Age of Environmental Documents (page 17) — The proposed policy states that, "If the environmental documents are more than five years old, the applicant must re-evaluate the environmental conditions and prepare updated Environmental documents . . . ." The phrase "if deemed necessary" should be added to this sentence.

Thank you for consideration of these comments and suggested edits to the State Revolving Loan Fund policy. Many of Tri-TAC's members, represented by special districts and cities, rely on the SRF to fund new wastewater infrastructure. Changes to the policy should focus on creating a process to make funds available to as many eligible applicants as possible. If you have any questions regarding these comments, please contact the undersigned.

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