

OPTIONAL FORM 99 (7-90)

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NSN 7540-01-317-7388

5059-101

GENERAL SERVICES ADMINISTRATION



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

May 4, 2011

Mr. Christopher Stevens
Division of Financial Assistance
California State Water Resources Control Board
P.O. Box 944212
Sacramento, CA 94244-2120

Ref: Funding Eligibility of the Monterey County Desalination Project
Through the California Clean Water State Revolving Fund (CWSRF)
Program

Dear Mr. Stevens,

Thank you for including staff from EPA Region 9 in the March 2, 2011 presentation and discussion to determine potential CWSRF funding and project eligibility of the proposed Monterey Bay Regional Desalination Project (Project).

As you explained, the State Water Resources Control Board (SWRCB) staff initially concluded that the Project is ineligible for CWSRF funding. However, the Marina Coast Water District (MCWD) and its consultant have noted that the project is referenced in local watershed management plans and thus may be eligible as a CWSRF nonpoint source (NPS) project. To help answer this eligibility question you asked for EPA's assistance in rendering an opinion. After hearing the initial presentation and reviewing further the scope of the Project (enclosed as an excerpt from page 2 of a handout prepared by RMC Water and Environment for the SWRCB and dated 9 March 2011), it appears that this multi-benefit project's goal of addressing groundwater protection and saltwater intrusion is technically eligible for consideration under 319(h) requirements and eligible for CWSRF funding.

As presented, the purpose of the Project is to help reduce seawater intrusion, restore fish habitat and flows to the impacted Carmel River, and protect the Salinas Valley groundwater basin. Both altered stream flows and saltwater intrusion due to excessive surface and groundwater withdrawals are considered forms of NPS pollution (<http://www.epa.gov/owow/NPS/conservation.html>).

To determine final CWSRF eligibility, EPA needs confirmation and assurances from the California CWSRF Program and/or the assistance recipients that the Project meets and

fulfills all the federal and state CWSRF program requirements. The following stipulations, with our remarks, are listed with the intent of helping the State make an eligibility determination:

1. Project activities must be identified directly in and support the State's NPS Management Program or the nine element watershed plans required by the 319(h) program.

The Clean Water Act (CWA) of 1987 authorized the CWSRF program to provide financial assistance for the implementation of management program activities detailed in the approved State NPS Management Program prepared in response to section 319(b)(2)(A-F). Assistance may be in the form of a loan or other assistance as provided by Title VI of the CWA. Activities may be either for implementation of NPS control under section 319(h) or ground water protection activities eligible under section 319(i).

Section 319(h) groundwater activities are eligible for CWSRF funding to the extent that they are identified directly in the State's NPS management program or through incorporation in the management program by reference to the State's Groundwater Protection Strategy, Comprehensive State Groundwater Protection Program, or Source Water Protection Program.

Currently, the State NPS Program and EPA are not aware that groundwater protection activities related to this Project are identified directly in the State's NPS management program or alternatively through incorporation in the NPS management program by reference to a State Groundwater Protection Strategy, Comprehensive State Groundwater Protection Program, or Source Water Protection Program within the NPS.

Under 319(i), the State is required to develop and implement a groundwater management program that includes a groundwater protection plan or strategy for addressing pollutant sources in order to qualify for CWSRF funding. These are similar requirements to those under 319(h). It is unclear whether the State has completed any groundwater assessment or planning activities to meet these requirements. If the State has such a program whether at the State Board or elsewhere, and has already completed groundwater assessment reports and plans, then EPA would review these documents for consistency with the eligibility requirements of the proposed Project under 319(h) or 319(i) scenarios.

2. The Project must have a direct water quality benefit.

Implementation of a water quality project should, in itself, protect or improve water quality. Specifically, the Project should state that its goal is to restore in stream flows to the Carmel River, to support the beneficial use of coldwater fisheries, and to meet the applicant's obligation under the Orders. The State should be able to estimate the quantitative and /or qualitative water quality benefit of this NPS project. Quantification of minimum in stream flow volumes necessary to restore and sustain native Steelhead populations to historic levels should be completed and approved by the resource and

regulatory agencies. This is critical to ensure that beneficial uses are restored and protected.

EPA would like to see some mechanism for ensuring the environmental benefits are provided in perpetuity. This would be in keeping with the spirit of the NPS program goals as well as the State Board Order 95-10 and Cease and Desist Order. Providing an allocation to the Carmel River for minimum in stream surface flows to support all beneficial uses would be an enforceable approach to ensuring that there will not be diversion and over drafting of the Carmel River surface flows in the future.

3. Only the portions of this Project that remediate, mitigate the impacts of, or prevent water pollution can be funded and identified.

In many cases, water quality protection is combined with other elements of an overall project such as operations and maintenance, which are not eligible activities for CWSRF funding. Where the water quality portion of a project is clearly distinct from other portions of the project, only the water quality portion can be funded by the CWSRF.

4. The proposed assistance recipient and type of assistance must be CWSRF eligible under the policies and laws of the State.

Included in a long list of eligible CWSRF loan recipients for 319 activities are individuals, community groups, farmers, businesses, conservation districts, and nonprofit organizations. Since the program is managed by the states, project funding varies according to the priorities, policies, and laws within each state. Eligibility requirements also vary by state.

5. The assistance recipient must identify a dedicated source of repayment, if applicable.

6. The assistance recipient must identify the significant environmental effects of the project and discuss ways to mitigate or avoid the effects, including growth inducing impacts.

EPA is concerned that this Project may induce growth and lead to future overdraw of the aquifer without the proper planning and protections. California's CWSRF environmental assessment process appears to deal with this concern by requiring the applicant to adequately demonstrate that induced growth will not occur as an indirect effect of the Project. The California "Environmental Review Process Guidelines for State Revolving Fund Loan Applicants" require applicants to address and analyze the significant environmental effects of a project and discuss ways to mitigate or avoid the effects, including growth inducing impacts.

7. The Division of Financial Assistance must include a special condition in the CWSRF loan agreement requiring the recipient to comply with any and all requirements stipulated in the SWRCB Orders.

The SWRCB Division of Water Rights is the lead State agency overseeing compliance with the stipulated Orders. It is EPA understands that DFA intends to coordinate with the Division of Water Rights to craft a special condition in the loan agreement. This condition should require the recipient to comply with the SWRCB Orders, goals and outcomes relative to the Carmel River as set by the Division of Water Rights.

8. Permitting Requirements

Eligible NPS projects or activities cannot be specifically required in a draft or final NPDES permit. Projects that go beyond minimum Federal regulatory requirements defined in NPDES permits may be fundable as section 319 projects. Consequently, projects not specifically required by a draft or final NPDES permit may be considered NPS projects.

We appreciate your interest in funding new and alternative projects through the California CWSRF program in an effort to meet the water quality needs of the State. Should you have questions or need to discuss these comments further please call Wilson Yee, 415-972-3484 or Juanita Licata, 415-972-3450.

Sincerely yours,



Wilson Yee
California NPS Project Officer



Juanita Licata
California SRF Project Officer

Attachment**Quote from page 2 of a handout prepared by RMC Water and Environment for the SWRCB and dated 9 March 2011:**

The Monterey Bay Regional Desalination Project is a new, multi-benefit project being implemented by a partnership among Marina Coast Water District (MCWD), Monterey County Water Resources Agency (MCWRA), and California American Water Company (CAW) that will help remediate the seawater-intruded Salinas Valley Groundwater Basin and restore flows to the impacted Carmel River, while also contributing to much needed local water supplies. In short, the Regional Desalination Project will extract brackish groundwater from the intruded 180-Foot Aquifer of the Salinas Valley Groundwater Basin, produce desalinated water, convey it to the existing MCWD and CAW distribution systems to offset existing diversions from the Salinas Valley Groundwater Basin and the Carmel River, and increase the system's use of storage capacity in the Seaside groundwater Basin. The Regional Desalination Project will consist of several distinct components: Brackish Source Water Wells and Brackish Source Water Pipelines; a Desalination Plant; brine disposal Outfall Facilities; Product Water Pipelines, storage facilities, and an aquifer storage and recovery (ASR) system. The project components will be constructed, owned, and operated by different project partners. The Brackish Source Water Wells will be owned by MCWRA, as well as a portion of the Brackish Source Water Pipeline. The other portion of the Brackish Source Water Pipeline will be owned by MCWD, in addition to the Desal Plant itself. The brine disposal Outfall Facilities will be owned and operated by MCWD, in cooperation with Monterey Regional Water Pollution Control Agency (MRWPCA). The distribution facilities including in the Product Water Pipelines and storage facilities will be owned by a combination of MCWD and CAW. The ASR system is to be owned by CAW only.