

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: **MARCH 13, 2012**

From: **JD JAMES DURFEE**

Subject: **SEWER MAINTENANCE DISTRICT 1 WASTEWATER TREATMENT
PLANT COMPLIANCE DECISION**

ACTION REQUESTED / RECOMMENDATION: Staff recommends your Board take one of the following actions related to selecting a compliance alternative for the Sewer Maintenance District 1 (SMD 1) Wastewater Treatment Plant (Plant 1):

1. Accept the City of Lincoln's offer to complete the Mid-Western Placer Regional Sewer Project, and direct staff to negotiate the necessary agreements between the City of Lincoln and potentially the City of Auburn for design and environmental review of the project.
2. Adopt the attached Resolution awarding the bid for the Plant 1 Upgrade and Expansion Project, Project 04835 to C. Overaa & Co. in the amount of \$48,300,000, and authorizing the Director of Facility Services to execute a contract and any required change orders (up to \$3,900,000) consistent with the County Purchasing Manual and Section 20142 of the Public Contract Code, upon County Counsel's review and approval of required bonds and insurance.
3. Direct staff to negotiate an agreement with PERC Water Corporation (PERC) for a design/build, design/build/operate or design/build/operate/finance alternative for an upgrade and expansion of Plant 1.
4. Pursue regionalization of Plant 1 as a County-led project, and direct staff to begin design and environmental review.
5. Provide other direction that your Board deems appropriate.

BACKGROUND: On December 6, 2011 your Board heard presentations from staff and other interested parties regarding various options to achieve compliance with current permit requirements for Plant 1. After hearing comments from the public and deliberating on the alternatives, your Board directed staff to work closely with staff from Auburn, Lincoln and South Placer Municipal Utility District (SPMUD) to develop additional information. Staff has provided this information to your Board through informational updates at the January 10 and February 28, 2012 Board meetings. An updated summary of this information is provided in Exhibit A. In addition, a memorandum from County Counsel on governance issues is provided as Exhibit B. At the December 6, 2011 meeting, your Board also directed staff to return to your Board no later than March 13, 2012 for final direction.

A summary of the key components of each of the potential compliance alternatives is provided below:

Mid-Western Placer Regional Sewer Project (Lincoln proposal)

Additional Information Since December 6, 2011:

- The Placer Nevada Wastewater Authority Technical Advisory Committee reached a consensus on a preferred design approach that includes, in addition to the original design assumptions in the Lincoln proposal, increased pumping capacity at the Auburn treatment plant and additional emergency storage at the SMD 1 pump station.
- The Lincoln City Council reaffirmed their February 2011 proposal with deal point changes requested by County and Auburn staff (a letter from Lincoln will be provided to your Board at the March 13, 2012 meeting).
- The Auburn City Council adopted a Resolution affirming their desire to participate in a regional solution. The Resolution also indicates that the City of Auburn expects to be granted the capital cost of the project. The Resolution is attached as Exhibit C.

Project Description:

- The project includes construction of a pipeline and pump station(s) to transmit wastewater from SMD 1 (and potentially the City of Auburn) to the City of Lincoln treatment plant.
- The project includes the purchase of 1.7 MGD Average Dry Weather Flow (ADWF) of treatment capacity at the City of Lincoln treatment plant. Lincoln has offered to make available to all regional participants 1.4 MGD of unused capacity that will remain after the regional expansion. This capacity will be available as development occurs and paid for as development occurs. At twice the current growth rate this capacity will last about 10 years before another expansion (3 years to design and complete expansion). Additional initial capacity can be purchased at a negotiated price of \$16-20 / gallon.

Estimated Project Cost:

- \$94,710,000 total project cost (including Auburn); \$66,010,000 SMD 1 proportional project cost.
- \$73,000,000 SMD 1 stand alone project.

Potential Financing:

- State Revolving Fund (SRF) – 30 year term, 2.2% interest, \$7,500,000 principal debt forgiveness.

Estimated O&M Rates and Connection Fees:

Auburn Participating

- Initial O&M rates: \$82.24 / month
- Initial Connection Fee: \$10,426 / EDU

SMD 1 Stand Alone Project

- Initial O&M rates: \$90.53 / month
- Initial Connection Fee: \$10,501 / EDU

Plant 1 Upgrade and Expansion Project (Psomas design)

Additional Information Since December 6, 2011:

- Staff has obtained the Facility Plan Approval (FPA) / Preliminary Funding Commitment (PFC) from SRF staff, locking in the financing terms and principal forgiveness. A copy of the FPA / PFC is attached as Exhibit D.
- As stipulated by the construction contract documents, the construction cost has escalated \$1,500 per day since December 31, 2011 (\$120,000 total increase).

Project Description:

- The project includes construction of a new wastewater treatment plant on the existing Plant 1 site.
- Initial treatment capacity of 2.7 MGD ADWF with the potential for expansion to 4.2 MGD (Estimated expansion cost - \$15,000,000).

Estimated Project Cost:

- \$62,300,000 total project cost; \$58,600,000 moving forward cost.
- Construction bids expire March 19, 2012. In addition to receiving potentially higher bids, re-bid of the project would result in a 9-12 month delay which would extend completion of construction beyond the September 2015 compliance deadline, resulting in an additional \$1,800,000 – 2,000,000 in mandatory fines.

Potential Financing:

- State Revolving Fund – 30 year term, 2.2% interest, \$6,000,000 principal debt forgiveness.

Estimated O&M Rates and Connection Fees:

- Initial O&M rates: \$73.03 / month
- Initial Connection Fee: \$11,152 / EDU

PERC Proposal

Additional Information Since December 6, 2011:

- PERC provided updated financing options via a letter dated March 2, 2012. A copy of that letter is included as Exhibit E.
- County staff had several meetings and discussions with PERC to understand how costs are accounted for in the PERC proposal.

Project Description:

- The project includes construction of a new wastewater treatment plant on the existing Plant 1 site.

Estimated Project Cost:

- PERC has provided proposals for three various sized facilities:
 - 2.1 MGD ADWF - \$58,710,000 total project cost
 - 2.7 MGD ADWF - \$61,170,000 total project cost
 - 4.2 MGD ADWF - \$62,970,000 total project cost

Potential Financing:

- PERC has indicated that their proposal qualifies for SRF financing. This has not been confirmed by SRF staff. If the PERC project qualifies for SRF

financing, it would have the same financing rates and terms as the Plant 1 Upgrade and Expansion Project.

- If SRF financing is not available, PERC has proposed private financing with no initial capital contribution from the County. PERC's proposal does not include sufficient information to determine the private financing terms.

However, if SRF financing is not available, traditional tax-exempt financing would likely provide better terms than private financing. Therefore, tax-exempt financing was assumed as the alternative financing for the purposes of the rate analysis.

Estimated O&M Rates and Connection Fees (2.7MGD Project):

SRF Financing (if available)

- Initial O&M rates: \$72.24 / month
- Initial Connection Fee: \$8,619 / EDU

Other Tax-Exempt Financing

- Initial O&M rates: \$76.87 / month
- Initial Connection Fee: \$11,592 / EDU

County Led Regionalization

A County led regionalization project would include the same components as the Mid-Western Placer Regional Sewer Project. A County led project would have the following differences in terms of cost and schedule:

- The total estimated project cost would increase by \$12,033,214 as a result of the County not being able to use the oversizing payment to the City of Lincoln as additional project contingency (Approximate \$5 increase to monthly O&M fee).
- Additional time would be added to the project schedule to complete the procurement process for design consultants. Potential exists for the project timeline to extend past the September 2015 compliance deadline included in the Plant 1 permit from the Regional Water Quality Control Board.

Key information for each compliance alternative is summarized in the following table.

	UPGRADE PROJECT					REGIONAL PROJECT	
	Psomas Design 2.7 MGD SRF	PERC Water				Auburn In 1.7 MGD SRF	Auburn Out 1.7 MGD SRF
		2.1 MGD SRF	2.1 MGD Tax- exempt	2.7 MGD SRF	2.7 MGD Tax- exempt		
SMD 1 Capital Cost Moving Forward	\$58,600,000	\$58,710,000		\$61,170,000		\$66,010,000	\$73,000,000
O&M Rates	\$73.03	\$76.66	\$78.32	\$72.24	\$76.87	\$82.24	\$90.54
Connection Fees	\$11,152	\$4,377	\$5,349	\$8,619	\$11,592	\$10,426	\$10,501

ENVIRONMENTAL DETERMINATION: On July 12, 2011, your Board adopted a Mitigated Negative Declaration (MND) for the SMD 1 Wastewater Treatment Plant Upgrade and Expansion Project. No additional environmental review is needed for the Psomas designed project.

Detailed Preliminary Project Description and Environmental Constraints documents have been prepared for the Regional Project (previously distributed to the Board). The environmental review process is ready to begin upon the Board's acceptance of the City of Lincoln's offer or direction to proceed with a County led regionalization project. The City of Lincoln will be the lead agency on the regionalization project and it is anticipated that an environmental impact report will be prepared.

Environmental review for a PERC project has not been completed. The adopted MND for the SMD 1 Wastewater Treatment Plant Upgrade and Expansion Project would need to be amended to address the differences between the projects.

FISCAL IMPACT: Fiscal information for each of the compliance alternatives is summarized in the background section of this memo. A summary of the financial analysis for each compliance alternative is provided in Exhibit F. Rate estimates are provided for comparative purposes related to project costs only and should not be relied upon as a forecast of future rates as other cost factors will be included when future rates are set.

JD:BZ:LM

CC: COUNTY EXECUTIVE OFFICER

ATTACHMENTS:

RESOLUTION
EXHIBIT A – SMD 1 COMPLIANCE ALTERNATIVE UPDATE
EXHIBIT B – MEMORANDUM FROM COUNTY COUNSEL DATED MARCH 13, 2012
EXHIBIT C – CITY OF AUBURN RESOLUTION
EXHIBIT D – FPA / PFC
EXHIBIT E – LETTER FROM PERC DATED MARCH 2, 2012
EXHIBIT F – FINANCIAL SUMMARY

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**Before the Board of Supervisors
County of Placer, State of California**

**In the matter of: A RESOLUTION TO AWARD THE BID FOR RESO. _____
THE PLANT 1 UPGRADE AND EXPANSION PROJECT,
PROJECT 04835 TO C. OVERAA & CO. IN THE AMOUNT OF
\$48,300,000, AND AUTHORIZE THE DIRECTOR OF
FACILITY SERVICES TO EXECUTE A CONTRACT AND ANY
REQUIRED CHANGE ORDERS (UP TO \$3,900,000).**

The following RESOLUTION was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held _____ by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Chair, Board of Supervisors

Attest:

Clerk of said Board

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Placer, State of California, that this Board awards the contract for the Plant 1 Upgrade and Expansion Project, Project 04835 to C. Overaa & Co. in an amount not-to-exceed \$48,300,000 and authorizes the Director of Facility Services, or his designee, to execute said contract upon review and approval by Risk Management and County Counsel, and further grants the authority to execute any required change orders (up to \$3,900,000) consistent with the County Purchasing Manual and Section 20142 of the Public Contract Code.

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES**

To: **BOARD OF SUPERVISORS**

Date: **MARCH 13, 2012**

From: **JAMES DURFEE / BILL ZIMMERMAN**

Subject: **SMD 1 COMPLIANCE ALTERNATIVE UPDATE**

The following is a summary of the work undertaken by County staff as directed by your Board on December 6, 2011. Under each task is a summary of our progress in completing these tasks.

1. **Provide a side-by-side comparison of the Brown & Caldwell and City of Lincoln/Stantec cost estimates for a regional sewer project.** Staff developed a comparison of the two cost estimates which was provided to your Board as part of our January 10, 2012 update. This comparison served as the basis for the preferred design approach and revised firm price offer from the City of Lincoln discussed in Item 2.
2. **Provide an updated cost estimate for the regional sewer project.** Through weekly meetings with the Placer Nevada Wastewater Authority (PNWA) Technical Advisory Committee (TAC) a consensus was reached on a preferred design approach that includes many of the original design assumptions included in the Lincoln proposal as well as increased pumping capacity at the Auburn treatment plant, and increased emergency storage at the Sewer Maintenance District (SMD) 1 pump station.

On February 28, 2012, the Lincoln City Council approved revisions to their February 10, 2011 offer. The more significant refinements include:

- a. The project was revised to reflect the PNWA TAC's preferred design approach.
 - b. The firm price was increased from \$89,000,000 to \$94,710,000 (SMD 1's share increased from \$64,500,000 to \$66,010,000).
 - c. The firm price is now subject to adjustment to account for construction inflation.
 - d. The State Revolving Fund (SRF) financing information has been updated.
3. **Begin working on the initial studies necessary to complete an environmental document for a regional sewer project.** ICF International prepared a Preliminary Project Description that was provided to your Board as part of our February 28, 2012 staff report. Per your Board's direction, the City of Lincoln proposal was used as the basis for the project description with potential variations agreed to through the TAC meetings.

On March 2, 2012, representatives from Placer County, the City of Auburn, and the City of Lincoln met with representatives of several Federal and State wildlife agencies that are participating in the development of the Placer County Conservation Plan (PCCP). The City of Lincoln and its consultant team presented a project overview and lead a discussion of issues such as impacts to wetlands, vernal pools, riparian habitat, stream flow, indirect effects, and sensitive species. The discussion also focused on the

schedule for EIR preparation and which Federal Agency would be the lead for NEPA compliance. There was also a discussion of what studies would be needed to analyze environmental impacts – especially those associated with the cessation of wastewater effluent discharges from Plant 1 and the City of Auburn's WWTP. ICF International is preparing a work plan for any necessary stream studies for Auburn Ravine and Coon Creek for review by the various wildlife agencies. A particular emphasis will be put into assessing the impacts on federally-listed salmonids and developing a mitigation strategy in an area designated as critical habitat by the Federal Endangered Species Act.

- 4. Present a list of questions to SRF staff to obtain answers to several questions regarding the availability and use of SRF funds.** County staff worked with SRF staff to answer questions related to the potential to use SRF funding for the PERC proposal, and on the ability of the existing SRF funding to be applied to a regional project. A summary of that process, including copies of correspondence and meeting minutes, was provided to your Board as part of our February 28, 2012 update. The potential use of SRF funding for an alternate project is described in Item 10 below and discussed in detail in the March 13, 2012 staff report from the Wastewater Management Working Group.

In addition, The State Water Resources Control Board adopted a Resolution approving extended term (30 year financing) for regional sewer projects. A copy of this Resolution was provided to your Board as part of our February 28, 2012 update.

- 5. Prepare a rate comparison between the PERC proposal and the regional sewer proposal.** County staff had several meetings and discussions with PERC to gain a better understanding of their proposal and to understand how costs are accounted for in their proposal. Detailed information, including estimated rate projections are included in the March 13, 2012 staff report from the Wastewater Management Working Group.
- 6. Obtain a more formal response from the City of Auburn regarding their interest in a regional sewer project.** At their January 23, 2012 meeting, the Auburn City Council approved a Resolution affirming their desire to participate in a regional solution. The Resolution was provided to your Board as part of our February 28, 2012 update, and is included in the March 13, 2012 staff report from the Wastewater Management Working Group.
- 7. Accept any Design Build proposals submitted before January 1, 2012.** No additional design build proposals were received.
- 8. Investigate SPMUD participation in developing a regional sewer project.** SPMUD staff has actively participated in the PNWA TAC meetings and were instrumental in TAC reaching consensus on the preferred design approach.
- 9. Submit a request to the Central Valley Regional Water Quality Control Board (RWQCB) for information regarding the potential for a new compliance schedule under a regional sewer scenario.** In response to a written request from Facility Services, the RWQCB provided a letter dated January 20, 2012 indicating that

amending the compliance schedules included in our NPDES permit would need to be adopted through the standard permit revision process, including adoption by the Water Board. Staff's request letter and the RWQCB response were provided to your staff as part of our February 28, 2012 update to your Board.

10. Continue working with SRF staff to secure Facility Plan Approval (FPA)/Preliminary Funding Commitment (PFC) for the SMD 1 WWTP Upgrade and Expansion Project to lock in the terms of financing and Principal Forgiveness.

The PFC was executed on February 16, 2012, reserving a 30 year extended term loan of \$58,376,044 (\$48,300,000 for construction and \$10,076,044 for design, construction management, and other administrative allowances) with \$6,000,000 of principal debt forgiveness, at an interest rate of 2.2%. In addition, the PFC includes provisions that allow the financing, including the debt forgiveness, to be transferred to a regional project or another alternate project. Should the County elect to pursue regionalization or other alternative project, the County will need to submit a complete application for the alternative that includes adopted environmental review documents and execute a new initial financing agreement by May 30, 2013 (the SRF may grant a 120 day extension of this deadline for the alternative project for good cause). A copy of the FPA / PFC is included in the March 13, 2012 staff report from the Wastewater Management Working Group.



MEMORANDUM
FROM THE OFFICE
OF COUNTY COUNSEL

TO: Board of Supervisors
FROM: Anthony J. La Bouff, County Counsel
DATE: March 13, 2012
RE: Regional Sewer

Since your Board's meeting of December 6, 2011, the County Counsel's office has provided support to the continuing conversation of Regional Sewer. County Counsel attended three of the meetings of the Placer Nevada Wastewater Authority, and either County Counsel or Deputy County Counsel Robert Sandman have attended numerous committee meetings of staff on this subject. Recurring questions to Counsel have focused on the generic term of "governance." Governance resolutions will be defined by the agreements finally reached among the parties. Counsel would expect these agreements to be detailed and at present there are significant unanswered questions that are critical to the completion of these agreements. Counsel also provided a letter to representatives of PERC Water Corporation sent by Deputy County Counsel, Robert Sandman which was attached to a communication to the Clean Water State Revolving Fund by Counsel for PERC Water Corporation. With these caveats in mind, Counsel would offer the following observations.

Fundamentally, the "firm offer" from the City of Lincoln to the County of Placer is to provide a construction project for the delivery of wastewater from North Auburn to the City of Lincoln. Subsequently, as currently proposed, the City of Lincoln will operate that delivery system. The City of Lincoln proposed a similar offer to the City of Auburn. Although the firm offer from the City of Lincoln provides all the basic concepts of the construction phase, Counsel recommends to the Board of Supervisors for the protection of the County of Placer and the City of Lincoln that final detailed contracts be entered into by the parties. Absent such detailed contracts and based upon the firm offer language alone there could in Counsel's opinion be an array of questions and potential debates about what are the exact deliverables and what are the obligations of the City of Auburn and the County of Placer in exchange for those deliverables.

Noteworthy, the City of Lincoln will be bidding a project based upon an environmental study for which they will be the lead agency. The core of that bid will be specifications consistent with the requirement of the Public Contract Code of California. Those specifications have not been approved by any agency as of yet. The agreement between the County of Placer, City of Auburn and the City of Lincoln should incorporate by reference these specifications. Beyond the construction commitment in the firm offer, the City of Lincoln is offering to provide leadership in compliance with the California Environmental Quality Act. As is typical for the County, we would expect contractual language to detail what is expected by the County of Placer.

A significant unanswered question for both the environmental review and the construction agreements is the respective duties of the parties for defense and indemnification for any litigation. Under the construction agreement, Counsel anticipates that the City of Lincoln will defend any litigation by the contractors they hire and/or any challenges regarding payment of prevailing wages. What is less clear to Counsel is how any challenge under the California Environmental Quality Act will be handled. Given that the firm offer places the responsibility for the environmental documentation entirely upon the City of Lincoln, Counsel recommends that the City of Lincoln indemnify and defend the County of Placer and the City of Auburn. But that is a subject matter to be negotiated.

The City of Lincoln's firm offer has the City of Lincoln owning and operating the facilities that are constructed. Recent agreements of the Technical Advisory Committee indicate that at some point the City of Lincoln would be willing to transfer these facilities to the County of Placer and/or the City of Auburn or some agreed upon entity created by those two parties. At present Counsel is not aware of any agreement on this transfer as to either its time or the substance of the procedures to be followed, so a contract for the operation and maintenance of the facility once constructed is anticipated with a provision for flexibility as to transferability. Until transfer occurs, the City of Lincoln would simply at the end of 5 years, in addition to sewer treatment charges, be entitled to an operation and maintenance charge for the facilities constructed. This operational system could be the subject of a distinct separate contract with a critical component being how rates are set for this operation and maintenance responsibility. Finally, a contract similar to existing County/Roseville Agreements for long-term treatment would be necessary.

Counsel is aware of a number of comments by staff members and elected officials addressing the need for "governance" over rates. Counsel has determined through conversations with Placer Nevada Wastewater Authority that there appears to be concurrence that the operation of the Lincoln treatment plant would into the future remain a City of Lincoln operation. Neither the County of Placer, City of Auburn nor any entity created between them would have responsibility for setting those sewer treatment charges. However, the City of Lincoln has committed that for similarly situated consumers the treatment rates charged in the City of Lincoln, City of Auburn and North Auburn would be the same. The differential in end-user rates would be attributable to the maintenance of the trunk line between mid-County and City of Lincoln and collection costs of the City of Auburn and the County of Placer. In essence, collections and maintenance of waste outside of the City of Lincoln would be a burden upon the users of those systems. Contracts need to define this in detail.

Counsel anticipates after reviewing the existing Placer Nevada Wastewater Authority agreement that that agency in the near future would dissolve. However, under the firm offer by the City of Lincoln and numerous conversations some "administrative body" needs to be available to resolve technical questions. This technical body at a minimum would require representation by staff to any agency to the agreement, i.e., the City of Lincoln, City of Auburn and the County of Placer. It would be up to the parties to determine if any other party would be appropriate as either a member of this technical body or a consultant to this technical body. South Placer Municipal Utility District has to date offered considerable assistance with its staff.

Beyond technical discussions for implementing the above stated agreements, it is possible but not inherently necessary that disagreements will need to be resolved by some review by elected

officials. At the most basic level a committee could be set up akin to the relation the County of Placer has with the United Auburn Indian Community to meet four times a year for elected officials to hear and resolve issues and to receive status reports, etc. More likely, this committee would be shaped in the form of a Joint Powers Authority through a new Joint Powers Agreement. This Authority would have potential responsibility for resolving all disputes by vote of their board, to resolve all questions about transferability if and when those issues develop, to resolve all questions and methodology regarding timing and nature of expansion of plant operations, and oversee fiscal administration depending on if or how funds are committed beyond a Clean Water State Revolving Fund loan.

If a Joint Powers Authority is formed, a number of significant but not too burdensome questions need to be resolved. First and foremost would be the power the parties confer upon the Authority. Secondly, the makeup of the Authority and how a voting structure might be weighted. Thirdly, staffing and financial administration. Regarding financial administration, it is clear the City of Lincoln anticipates that the County Treasurer would be pivotal not only in the assistance in the borrowing of the construction loan from the Clean Water State Revolving Fund but in the process of reviewing and approving billings on the construction project. The County is a party to a number of Joint Power Authorities all of which serve useful purposes and which operate effectively, but the formation of this Joint Powers Authority would be dependent upon a clear understanding by all the agencies of what they individually want the Authority to achieve. Counsel has received limited input on these questions to date and not enough to draft documents. Given the facts that have developed to date Counsel believes that the rate structure would not be part of this Authority, as the collection in North Auburn and the City of Auburn would remain the prerogative of their respective governing boards. Perhaps however, the Authority could be vested with power over the maintenance rate structure of the transmission.

Given the Board of Supervisors inaction on the motion by Supervisor Weygandt on February 28, 2012, there remains the possibility of substantial infusion of revenue for both construction costs or rate stabilization in the coming years. Within the context of Article 16, Section 18 of the State Constitution a fund might be created. Decisions about this fund need to be resolved before incorporating it in the above agreements. However, if created it would require documentation. It is Counsel's opinion if the Board of Supervisors determines to pursue a Regional solution negotiation of detailed agreements needs to be finalized. If the Board of Supervisors determines to pursue a PERC solution, similar efforts would be required. Given current and future staffing of the Office of County Counsel and ongoing responsibility, Counsel recommends retaining outside counsel to lead in these negotiations and documentation. If the Board of Supervisors determines to pursue the bid award on Sewer Maintenance District 1 upgrade all substantial legal work on that bid is completed.

RESOLUTION NO. 12-05

REGIONALIZED WASTEWATER TREATMENT PLAN

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

WHEREAS, residents of western Placer County (County), are served by seven separate wastewater treatment agencies that provide wastewater treatment services to approximately 200,000 residents; and

WHEREAS, in 1994 the County updated its General Plan. It's here that county policy to regionalize wastewater treatment began to take shape; and

WHEREAS, in 1998 the County recognized the need to sharpen its focus and commissioned a study to evaluate available options to meet the County's increased wastewater treatment needs; and

WHEREAS, this study recommended that the County pursue a regionalized wastewater treatment plan to include: construction of two new regional wastewater treatment plants, upgrade of an existing wastewater treatment facility, and closure of six small, inefficient facilities; and

WHEREAS, in 2000 the Placer Nevada Wastewater Authority (PNWA) was formed to help advance such projects. As one of its founding members, the City of Auburn remains a member agency; and

WHEREAS, the PNWA has proven to be successful with efforts contributing to the successful construction of a regional wastewater treatment and reclamation facility, the decommissioning of two inefficient facilities, installation of the Bickford Ranch regional pipeline and securing \$10 million in grants; and

WHEREAS, after years of hard work, leadership and a shared vision, nearly forty percent of the regional pipeline to the City of Auburn has been constructed and is in the ground awaiting completion; and

WHEREAS, the regional project under consideration would construct the remaining portions of this pipeline from Lincoln to Auburn. It would transfer wastewater from Sewer Maintenance District 1 (SMD1) in North Auburn to the regional facility in Lincoln, and;

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WHEREAS, completion of a regional project would allow the County to achieve and better comply with increasingly stringent water quality standards and treatment/disposal criteria; and

Given all taxpayers in California face increasing regulation and the resulting cost, a regional approach may also benefit the City of Auburn; and

WHEREAS, such consistent increase in sewer rates reveal the high cost of regulatory compliance, this trend is expected to continue with future cost increases best positioned to be offset with a regional solution; and

WHEREAS, City of Auburn expects to be granted the capital cost of the project; and

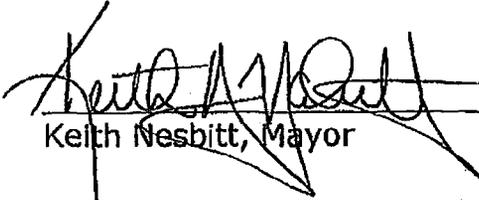
WHEREAS, participation of the City of Auburn is a key element in consideration of the regional solution effecting overall costs and the policy and organizational framework upon which will be used as the project advances; and

WHEREAS, the City reserves the right to review and accept any proposed governance. At the December 6, 2011 meeting of the Placer County Board of Supervisors, the board adopted Alternative A and directed staff to proceed with a regional solution for SMD1 compliance and return to the Board no later than March 13, 2012 with recommendations for a final Board decision. The upgrade and expansion of SMD1 remain a fall back option until March 19, 2012 in the event a regional solution is not possible. Staff was also directed to collaborate with staff of the City of Auburn, City of Lincoln, including SPMUD. Direction included evaluation of the public/private partnerships with the regionalization option.

NOW, THEREFORE, BE IT RESOLVED, that the Auburn City Council recognizes this unique opportunity and desires to participate with the County and the City of Lincoln to further evaluate this regional solution. As a result, we direct staff to participate in all relevant discussions and conduct analysis including but not limited to details about County funding support for the City per the direction of the Board of Supervisors on December 6, 2011. The Council will return in early March 2012 to consider participation in this regional solution.

DATED: January 23, 2012

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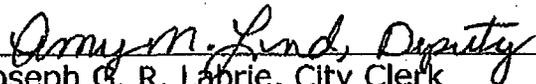

Keith Nesbitt, Mayor

ATTEST:


Joseph G. R. Labrie, City Clerk

I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular meeting of the City Council of the City of Auburn held on the 23rd day of January 2012 by the following vote on roll call:

Ayes: Kirby, Hanley, Holmes, Powers, Nesbitt
Noes:
Absent:


Joseph G. R. Labrie, City Clerk

EDMUND G. BROWN JR.
GOVERNORMATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

**DIVISION OF FINANCIAL ASSISTANCE (DIVISION)
FACILITY PLAN APPROVAL (FPA)
CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM
COUNTY OF PLACER (COUNTY)
SEWER MAINTENANCE DISTRICT (SMD) 1
WASTEWATER TREATMENT PLANT UPGRADE PROJECT (PROJECT)
CWSRF PROJECT NO.: C-06-5275-110**

FEB - 6 2012

CERTIFIED MAIL NO.: 7003-3110-0003-0771-19-92

Return Receipt Requested

Mr. James Durfee
Director of Facility Services
Placer County
11476 C Avenue
Auburn, CA 95603

RECEIVED
FACILITY SERVICES
2012 FEB - 8 PM 12: 54

Division staff prepared this FPA based on the County's CWSRF Program application and supporting documents. The FPA documents our understanding of the County's Project, and the conditions that will apply to the financing agreement for the Project. You must agree with these FPA findings and conditions before we can proceed with funding the Project.

This FPA constitutes a final staff decision. The FPA does not reserve funds for your Project and it is not the financing agreement. After the Division receives the County agreement on the eligibility decisions, schedule, and conditions in this FPA, the Project Manager will request approval of a CWSRF Preliminary Funding Commitment (PFC) for your Project by the Division's Deputy Director. After the Deputy Director approves the PFC, the initial financing agreement will be prepared and sent to the County for execution. A copy of the proposed PFC is attached to this FPA. To expedite this process, please sign in the space provided below and return the FPA to your CWSRF Program Project Manager immediately at:

Ms. Jennifer Toney, P.E.
State Water Resources Control Board
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244-2120
Phone: (916) 341-5646
E-mail: jtoney@waterboards.ca.gov

For your convenience, a draft copy of the CWSRF Program financing agreement template for Wastewater and Water Recycling Repayment and/or Partial Forgiveness is available online at: http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/docs/cwsrf/cwsrf_cntrct_tmplte.pdf.

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

If you do NOT agree with this FPA, then you must request a Final Division Decision within ten working days from the date you receive this approved FPA. Your request should specify the items of disagreement and suggest the exact changes with which you will agree. Please send the request to:

Ms. Elizabeth L. Haven, Deputy Director
Division of Financial Assistance
P.O. Box 944212
Sacramento, CA 94244-2120

DIVISION STAFF APPROVAL	
Sign Here: 	Date: <u>2/3/12</u>
James Maughan, Assistant Deputy Director Division of Financial Assistance	

APPLICANT AGREEMENT	
Using the authority delegated by the County on May 18, 2010, in Resolution No. 2010-115, I hereby agree, on behalf of the County, with the content and conditions of this CWSRF FPA for Project No. C-5275-110, and have reviewed the draft financing agreement template.	
Sign Here: 	Date: <u>2/14/12</u>
James Durfee, Director of Facility Services Placer County	

POLICY

Policy for Implementing the Clean Water State Revolving Fund (CWSRF) for Construction of Wastewater Treatment Facilities (Policy) amended on March 17, 2009.

TYPE OF FUNDING REQUESTED

The County is requesting financing at one-half the General Obligation (GO) bond rate, and Principal Forgiveness (PF), as available through the CWSRF Program.

TOTAL PROJECT COST
\$58,376,044

TOTAL CWSRF FUNDING REQUEST
\$58,376,044

AUTHORIZED REPRESENTATIVE

Mr. James Durfee
Director of Facility Services
Placer County
11476 C Avenue
Auburn, CA 95603
(530) 889-6829

PROJECT DIRECTOR

Ms. Kathy Kane
Project Manager
Placer County
11476 C Avenue
Auburn, CA 95603
(530) 886-4909

TECHNICAL REVIEW

PROJECT LOCATION

The Sewer Maintenance District (SMD) 1 Wastewater Treatment Plant (WWTP) is located at 11755 Joeger Road in Auburn, California.

EXISTING FACILITIES

Placer County Department of Facility Services operates and maintains nine separate sanitary sewer systems within Placer County, all of which derive their operating revenue from sewer user fees. SMD 1 is one of these nine separate sanitary sewer systems, and is governed by the Placer County Board of Supervisors.

The WWTP's average dry weather flow (ADWF) design capacity is 2.18 million gallons per day (mgd). The WWTP's peak wet weather flow capacity is 11.9 mgd. The plant currently provides a tertiary level of treatment when influent flows are 3.5 mgd or less, and a mixture of secondary and tertiary treatment when flows are greater than 3.5 mgd.

The SMD 1 WWTP currently consists of headworks that include comminution (pulverization) and aerated grit removal, four primary clarifiers, three rotating biological contactor (RBC) trains, four secondary clarifiers, two trickling filters, six tertiary gravity filters with anthracite media, three chlorine contact chambers, primary and secondary anaerobic digesters, a belt press, and sludge drying beds, which are used when the belt press is not in operation. Dewatered sludge is disposed at the Western Regional Sanitary Landfill near Lincoln.

The SMD 1 WWTP currently discharges into Rock Creek, a water of the United States (US) within the Upper Coon-Upper Auburn watershed, at two locations. Rock Creek is a tributary to Dry Creek, a 303d listed waterbody, which flows into the Bear River and ultimately into the Sacramento River. The primary discharge point is located 200 feet upstream of the confluence of Dry Creek and Rock Creek. A secondary discharge point, used only when the primary discharge is taken out of service for regular cleaning and maintenance, is located on Rock Creek another 200 feet upstream of the primary discharge location. After the upgrade is complete, the secondary discharge point will no longer be required.

The SMD 1 WWTP presently operates and discharges treated effluent to Rock Creek under waste discharge requirements (WDRs) set forth in a National Pollutant Discharge Elimination System (NPDES) permit issued by the Central Valley Regional Water Quality Control Board (Regional Water Board) as Order No. R5-2010-0092 (NPDES Permit No. CA 0079316). The NPDES permit includes final effluent limitations for biochemical oxygen demand, total suspended solids, total coliform organisms and ammonia, and requires full compliance with these final effluent limitations by September 1, 2015. In addition, the Regional Water Board has adopted Cease and Desist Order (CDO) No. R5-2010-0093 because the SMD 1 WWTP does not consistently comply with effluent limitations for aluminum, chlorodibromomethane, chloroform, dichlorobromomethane, nitrate plus nitrite, and nitrite. The CDO No. R5-2010-0093 requires full compliance with final effluent limitations for these constituents by September 1, 2015.

PROJECT OBJECTIVES

- Provide wastewater treatment that consistently complies with the discharge standards, operational requirements, and project delivery milestones included in NPDES Permit Order No. R5-2010-0092 issued by the Regional Water Board in September 2010.
- Provide wastewater treatment facilities that utilize proven processes and technologies, include adequate operational safeguards, and are efficient to operate.
- Protect and/or enhance the environment by improving overall water quality of effluent, preserving existing riparian habitat, protecting beneficial aquatic uses, improving stormwater drainage and management, enhancing odor control, and increasing energy efficiency.

PROJECT DESCRIPTION

The SMD 1 WWTP Project construction will occur at two locations: 1) the WWTP; and 2) the outfall locations. The Project components are described below.

1. Construction activities at the WWTP

- Septage Receiving Station – Installing a new septage receiving station.
- Headworks – Constructing a new headworks with automated screening equipment, flow measurement equipment, influent sampling equipment, and a aerated grit removal system with a grit washer.
- Primary Treatment – Constructing two new circular primary clarifiers and primary sludge and scum pumps.
- Secondary Treatment – Installing two new secondary clarifiers with a return and waste activated sludge pump station and a splitter box; and constructing two new aeration basins with anoxic zones, fine-bubble aeration diffusers, centrifugal blowers, and recycle pumps. The aeration system will use an activated sludge process, which uses multiple chambers to biologically treat the wastewater and provide nutrient removal.
- Site Work – Completing site work, including grading, roadwork, fencing and site lighting. Access roads will be provided to all major process and maintenance centers.
- Solids Handling – a) Sludge thickener: installing a new gravity belt thickener or rotary screen thickener with storage tanks and pumps; b) anaerobic digesters: installing a new anaerobic digester, renovating and upgrading the two existing anaerobic digesters, installing new pumps, mixing, heating and digester gas systems; and c) sludge dewatering system: installing a new belt or rotary press for sludge dewatering.
- Tertiary Treatment – Adding a new screen to filter secondary clarifier effluent, new modular up-flow filtration units (the existing filters will serve as backup filters), a secondary clear well and pump station, backwash tanks and associated facilities.
- Disinfection – Installing a new ultraviolet disinfection system.

- Other Improvements – a) Upgrading a supervisory control and data acquisition system with critical alarms; b) adding new conduits and piping; c) upgrading the existing non-potable water supply system; d) modifying an existing drainage system; e) constructing a new chemical feed building and storage facilities; f) converting existing buildings into maintenance and storage facilities; g) constructing a new operations control building, a modern analytical laboratory, and a new safety training facility; and h) installing a new security system.

2. Outfall and In-stream Work

- Stream Monitoring Equipment: Installing stream monitoring equipment to allow continuous stream flow and water quality monitoring. Sensors for pH and pressure will be placed in Dry and Rock Creeks
- Primary Outfall: Constructing a new primary outfall in Rock Creek.
- Secondary Outfall: Removing the existing secondary outfall.
- Concrete Pipe: Removing an existing abandoned concrete pipe located in Rock Creek.

The County is also considering the following two alternatives: 1) a design/build/operate option with PERC Water Corporation; or 2) a regionalization project where the wastewater from SMD 1 would be diverted to the City of Lincoln's WWTP. If the County selects either one of these options it will require an amended or a new FPA/PFC.

Water Code 5103, Statement of Diversion and Use of Water, does not apply to the County.

The Project is listed on the current CWSRF Project Priority List.

The Project is listed in the current CWSRF Intended Use Plan (IUP).

The Project is routine and non-controversial based on documents and communications with the County: Yes No

CWSRF PROJECT COSTS

The following table outlines the estimated County's Project cost:

TYPE OF WORK	Estimated Costs
A. Construction	\$48,300,000
B. Allowances (Soft Costs)	
1. Planning	\$909,182
2. Design	\$3,158,738
3. Construction Management	\$5,623,848
4. Administration	\$384,276
5. Value Engineering	\$0
Subtotal of Allowances	\$10,076,044
TOTAL	\$58,376,044

ELIGIBLE COSTS

The items listed below are eligible for CWSRF financing. Detailed Project component eligibility and eligible component size will be determined during the review of the final Plans and Specifications (P&S) as part of the Approval of Award (AOA), will be consistent with this FPA, and will be included in the CWSRF financing agreement.

- Facilities for administration, operations, maintenance, and laboratory space
- Ultraviolet disinfection system
- Headwork structures and associated equipment
- Primary clarifiers and associated equipment
- Secondary clarifiers and associated equipment
- Septage receiving station
- Site preparation, access, or security improvements
- Traffic control during construction
- Sludge thickener, anaerobic digesters, and sludge dewatering equipment
- Filters and associated equipment
- Control instrumentation and alarms
- Chemical feed equipment
- Relocate/Demolish/Remodel existing treatment process buildings as needed for installation of new facilities
- Monitoring equipment
- Outfall structure
- Allowances (soft costs) for planning, design, construction management, and administration
- Mitigation measures mandated by State and/or Federal agencies

INELIGIBLE COSTS

- Construction costs prior to the issuance of the PFC
- Construction change orders and claims exceeding the amount of the CWSRF financing agreement
- Engineering costs included as part of the construction bid
- Decorative items (artwork, sculptures, reflective ponds, etc.)
- License fee(s) for proprietary treatment processes
- Construction contingencies
- Operation and maintenance costs and extended warranties for equipment
- Act of God insurance costs
- Portable furniture and appliances
- All other items not included in the construction contract except allowances
- Demolition of existing facilities NOT required to provide space for eligible new facilities

ELIGIBLE DESIGN PARAMETERS

The Project's eligible design parameters will be consistent with Order No. 2010-0092 (NPDES Permit No. CA0079316). A table of eligible design parameters is provided below:

PARAMETER	VALUE
Population Served	27,200 persons (Year 2034) ¹
Average Dry Weather Flow	2.7 MGD ¹
Peak Wet Weather Flow	11.9 MGD ¹
Influent Biochemical Oxygen Demand (BOD ₅)	6,720 lbs/day ²
Influent Total Suspended Solids	6,400 lbs/day ²
Influent TKN (Total Kjeldahl Nitrogen)	1,600 lbs/day ²
Effluent BOD ₅	10 mg/L (Average monthly limit) ³
Effluent TSS	10 mg/L (Average monthly limit) ³
Effluent Total Nitrogen (TN, Nitrate plus Nitrite)	10 mg/L (Average Monthly Limit) ³
Effluent Ammonia Nitrogen (NH ₃ -N)	1.4 mg/L (Average Monthly Limit) ³
Effluent pH	Between 6.5 and 8.2 ³
¹ Source is the County's Preliminary Design Report submitted August 2010.	
² Influent loads reported as annual averages.	
³ Source is the Regional Water Board WDR Order No. R5-2010-0092, NPDES Permit No. CA0079316.	

PROJECT SCHEDULE

This tentative schedule does not supersede any regulatory enforcement schedule. Special attention to the Project milestones is critical. Schedules must be compatible with requirements of the Regional Water Board enforcement actions related to the planned facilities. Approval of a schedule not compatible with the Regional Water Board requirements does not relieve the County of its responsibility to achieve compliance.

COUNTY MILESTONES	SCHEDULED DATE
Advertise for Bids	July 22, 2011 (complete)
Open Bids	September 22, 2011 (complete)
Start Construction (Notice to Proceed)	March 30, 2012
Submit AOA Package	April 30, 2012
Submit Construction Status Reports	Due Quarterly During Construction of Project
Completion of Construction	February 27, 2015
Initiation of Operations	March 27, 2015
Submit Project Performance Certification Report	June 27, 2016

ENVIRONMENTAL REVIEW

State Water Board staff conducted a Tier I environmental review, reviewed the environmental documents provided by the County, and determined that the Project will not result in any significant adverse water quality impacts. The County is in the process of obtaining necessary permits, and has initiated consultation with the United States Army Corps of Engineers (USACE) for Clean Water Act (CWA) Section 404 Nationwide Permits (NWP 5, 7 and 33), the Regional Water Board for a CWA Section 401 Water Quality Certification, and the California Department of Fish and Game (DFG) for a Lake and Streambed Alteration Agreement (SAA) under Section 1602 of the DFG code. The USACE initiated consultations with the United States Department of the Interior Fish and Wildlife Service (USFWS) under Section 7 of the federal Endangered Species Act (ESA) and the State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act (Section 106), as part of the permitting process.

The County is the lead agency under the California Environmental Quality Act, and prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for the Project. The IS/MND was circulated to the public and distributed through the State Clearinghouse (SCH No. 2011042083) for review from April 25, 2011 through May 24, 2011. The County received comments from the State Water Board, the Regional Water Board, the California Department of Transportation, the Nevada Irrigation District, the Dry Creek Conservancy, the Ophir Property Owners Association, Inc., and the Auburn Ravine Preservation Committee. The County responded to the comments, and included them in the final IS/MND. The County adopted the final IS/MND and a Mitigation Monitoring and Reporting Program (MMRP), and approved the Project on July 12, 2011. The County filed a Notice of Determination (NOD) with the Placer County Clerk on July 15, 2011 and the Governor's Office of Planning and Research (OPR) on August 2, 2011.

Dry and Rock Creeks are perennial streams and are considered relatively permanent waters (RPW). The Project will involve dewatering portions of Rock and Dry Creeks to install the stream monitoring equipment and a new primary outfall, and to remove a secondary outfall and pipeline. The stream dewatering will be completed through the use of cofferdams and a pipe bypass system or a horseshoe-shaped cofferdam. The Project will also involve placing approximately 250 cubic yards (cy) of rip rap above the ordinary high water mark (OHWM) in Rock Creek and approximately 600 cy of rip rap above the OHWM in Dry Creek.

The Project will permanently impact approximately 0.0034 acre of waters of the US, and temporarily impact approximately 0.17 acre of waters of the US. The County will implement compensatory mitigation, including re-vegetating the stream bank of Rock Creek near the existing secondary outfall to compensate for the permanent water quality impacts, and re-vegetate freshwater marsh habitat to compensate for the temporary water quality impacts. The County will also implement mitigation measures to reduce water quality impacts to a less than significant level. Thus, the Project will have less than significant impacts to waters of the US, wetlands and riparian habitat. The County initiated Section 7 informal consultation under the federal Endangered Species Act with the USACE on September 26, 2011. The USACE is in the process of completing its required federal consultations as part of the permitting process, and is expected to issue the CWA Section 404 NWP's soon thereafter.

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The Project area does not provide suitable habitat and is outside the known range of federally listed species, except for the federally threatened California red-legged frog (CRLF; *Rana draytonii*). There is suitable CRLF habitat located in Dry and Rock Creeks and in the freshwater marsh that abuts the streams. Field surveys were completed for the Project, including a reconnaissance-level field survey on July 29, 2010, a reconnaissance-level aquatic and riparian field survey along Rock and Dry Creeks on December 2, 2010, and a wetland jurisdictional delineation on December 7, 2010. No CRLF individuals were observed during the surveys. The nearest CRLF population occurs in the Michigan Bluff area of the Foresthill Divide, which is located more than 20 miles northeast of the Project area.

The USFWS determined that the CRLF is not likely to occur in the Project area, due to the distance from known occurrences and the diminished quality of the habitat from the presence of non-native predators (bullfrogs [*Rana catesbeiana*] and largemouth bass [*Micropterus salmoides*]). The USFWS also agreed with the USACE's finding that the Project may affect, but is not likely to adversely affect the CRLF.

The County will implement mitigation measures to reduce biological resource impacts to a less than significant level. Therefore, the Project will have no impact to federal special-status species.

The USACE requested a Section 106 concurrence and a finding of "no adverse effect to historic properties" from the SHPO on September 26, 2011. The SHPO has not yet responded. However, the State Water Board's Cultural Resources Officer (CRO) reviewed the documents submitted by the County for this Project. The CRO determined that the County provided sufficient documentation to support a Section 106 determination of "no historic properties affected."

The State Water Board will file an NOD with OPR following funding approval.

FINANCIAL AND FISCAL REVIEW

FISCAL IMPACT ON APPLICANT

A credit review was completed to analyze Placer County SMD 1's ability to enter into a financing agreement for the amount of \$58,376,044 for construction and allowance costs. The credit review provided recommendations regarding the financing agreement terms, maximum CWSRF financing amount, financial capacity and reserve fund requirements for the financing agreement.

The SMD 1 service area's estimated 2011 median household income (MHI) is \$44,405, approximately 76 percent of the State of California MHI. The estimated 2011 population is 11,114. The SMD 1 service area qualifies as a small disadvantaged community, and qualifies for extended term financing and principal forgiveness.

The most recent rate increases were approved following the Proposition 218 guidelines on May 12, 2009. The current monthly wastewater charge is \$82.00 per EDU, and there are currently 7,855 EDU's. Rates are projected to increase to \$85.00 beginning in fiscal year 2012/13. The current wastewater charge of \$82.00 per month equals \$984.00 per year which equals two percent of the 2011 median household income.

The first debt service payments are projected to be due in fiscal year 2015/16. After allowing for operations and maintenance costs projected at \$6,447,368 for fiscal year 2015/16, the estimated net revenues available for debt service will be \$3,164,886. The County has no outstanding debt secured by Sewer Maintenance District No. 1 net revenues.

PRINCIPAL FORGIVENESS ANALYSIS

As outlined in the CWSRF IUP for SFY 2010/2011, adopted by the State Water Board on August 3, 2010, \$97,770,482 in principal forgiveness is available to two categories of disadvantaged communities: 1) Small, Disadvantaged Communities with Substantial Water Quality Investment; and 2) Other Disadvantaged Communities.

The County's service area qualifies for principal forgiveness under Category 1. The County's service area has an estimated 2010 population of 11,420 persons. As of May 12, 2009, the County's wastewater rates are 82.00/month (2.0 percent of the community's MHI). As a small disadvantaged community with wastewater user rates more than 1.5 percent of the service area's MHI, the County may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness. With an estimated eligible cost of \$58.3 million the Project qualifies for \$6 million in PF.

The County submitted an evaluation regarding how the Project addresses the "Livability Principles" established by the United States (US) Department of Housing and Urban Development, US Department of Transportation, and US Environmental Protection Agency.

The final principal forgiveness amount may be modified based on the AOA determination, and the final financing agreement will be updated accordingly.

SECURITY AND SOURCE OF FINANCING REPAYMENT

Placer County SMD 1 shall dedicate the net revenues of SMD 1 to the repayment of the Financing Agreement.

A financing agreement for the amount of \$58,376,044, with \$6,000,000 in principal forgiveness, with an extended term of thirty years and an estimated interest rate of 2.20 percent will have an annual debt service of \$2,403,387. When compared to the net revenues of the SMD 1, the result is debt service coverage of 1.32 for fiscal year 2015/16. This exceeds the CWSRF policy requirement that net revenues be at least 1.10 times the total debt service.

COMPARATIVE REVENUES AND EXPENSES ANALYSIS

Revenues and expenses for Placer County SMD 1 for fiscal years 2008/09 through 2010/11; and projections for fiscal year 2011/12 through 2015/16 are summarized below.

County of Placer-Sewer Maintenance District #1

Fiscal Year	2008/09	2009/10	2010/11	2011/12 Projections	2012/13 Projections	2013/14 Projections	2014/15 Projections	2015/16 Projections*
Direct Service Charges	\$6,465,022	\$7,738,830	\$7,861,636	\$7,938,033	\$8,282,272	\$8,363,488	\$8,467,119	\$8,591,716
Inspection Fees	\$26,813	\$9,940	\$6,000	\$6,060	\$6,121	\$6,243	\$6,430	\$6,623
Connection Fees	\$507,637	\$534,425	\$305,439	\$301,498	\$362,565	\$443,135	\$523,705	\$604,275
Annexation Fees	\$42,980	\$25,025	\$28,647	\$28,933	\$29,222	\$59,614	\$61,402	\$63,244
Interest Revenues	\$385,943	\$280,637	\$206,000	\$189,732	\$204,138	\$195,168	\$195,310	\$346,396
Total Operating Revenues	\$7,408,395	\$8,588,857	\$8,407,722	\$8,464,256	\$8,884,318	\$9,067,648	\$9,254,966	\$9,612,254
Operating Expenses	\$5,242,375	\$5,003,353	\$5,621,988	\$5,923,763	\$5,962,760	\$5,996,362	\$6,185,054	\$6,447,368
Net Revenues	\$2,166,020	\$3,585,504	\$2,785,734	\$2,540,493	\$2,921,558	\$3,071,286	\$3,069,912	\$3,164,886
Proposed Debt Service	\$0	\$0	\$0	\$0	\$0	\$0	\$2,403,387	\$2,403,387
Debt Service Coverage	n/a	n/a	n/a	n/a	n/a	n/a	1.28	1.32

*First payment due fiscal year 2015/16

A reserve fund equal to one year's debt service shall be established from available cash. A reserve fund equal to one year's debt service is maintained so that in the event of non-payment, there are funds available to cover the debt service.

It is recommended that the Division approve the Preliminary Funding Commitment for the maximum amount of \$58,376,044 with \$6,000,000 in Principal Forgiveness

FISCAL IMPACT ON THE CWSRF PROGRAM

(as of 12/01/2011)	SFY 2011-12	SFY 2012-13	SFY 2013-14	SFY 2014-15	SFY 2015-16
Beginning Balance:	\$432,604,699	\$79,849,145	(\$163,020,954)	(\$152,547,014)	(\$8,830,856)
Estimated Repayments	\$220,104,778	\$230,104,778	\$240,104,778	\$250,104,778	\$260,104,778
Debt Service on Revenue Bonds	(\$30,228,204)	(\$27,714,204)	(\$23,821,829)	(\$20,966,279)	(\$19,356,506)
Estimated Capitalization Grants	\$68,764,114	\$32,087,000	\$28,800,000	\$28,800,000	\$28,800,000
Local Match Credits	\$3,511,387	\$2,515,245	\$895,696	\$936,409	\$1,058,550
Est. SMIF Interest:	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000	\$1,500,000
Estimated Disbursements	(\$583,020,792)	(\$384,790,558)	(\$197,052,003)	(\$98,736,840)	(\$33,043,997)
Subtotal	\$113,235,982	(\$66,448,594)	(\$112,594,312)	\$9,091,054	\$230,231,969
Pending Preliminary Funding Commitments	Estimated Disbursements				
City of San Clemente, #4516-110 (10/17/2011)		(\$7,422,003)	(\$4,948,002)		
City of San Diego, #4905-110 (09/26/2011)	(\$9,411,837)	(\$11,057,258)			
South Bayside System Authority, #5216-120 (11/10/2011)	(\$13,000,000)	(\$19,000,000)	(\$4,329,000)		
City of Turlock, #5256-110 (09/21/2011)	(\$4,000,000)	(\$11,000,000)	(\$9,000,000)		
Placer County Sewer Maintenance District 1, #5275-110 (12/01/2011)	(\$1,250,000)	(\$20,750,000)	(\$14,000,000)	(\$16,376,044)	
City of Redding, #5380-110 (11/15/2011)	(\$2,000,000)	(\$10,000,000)	(\$600,000)		
City of Vista, #5698-110 (09/08/2011)		(\$5,542,770)			
City of Santa Barbara, #6401-110 (09/21/2011)	(\$1,600,000)				
City of Stockton, #7085-110 (03/30/2011)	(\$1,625,000)				
City of Rio Dell, #7401-110 (05/18/2011, 08/25/2011)	(\$500,000)	(\$6,924,895)			
Valley Center MWD, #7454-110 (11/08/2011)		(\$437,268)	(\$1,083,204)	(\$180,528)	
Valley Center MWD, #7454-120 (11/08/2011)		(\$4,003,166)	(\$4,095,996)	(\$1,365,338)	
Valley Center MWD, #7454-130 (11/08/2011)		(\$435,000)	(\$1,896,500)		
	\$79,849,145	(\$163,020,954)	(\$152,547,014)	(\$8,830,856)	\$230,231,969

FISCAL IMPACT ON CWSRF PROGRAM PRINCIPAL FORGIVENESS

(as of 12/01/2011)	Principal Forgiveness			
	Category 1	Category 1	Category 2	Total
		SCG fees		
Beginning Balance	\$57,662,289	\$1,000,000	\$40,108,193	\$98,770,482
City of Williams, #4049-110 (final)	(\$6,000,000)			
City of San Diego, #4905-110			(\$3,000,000)	
City of Redding, #4971-240 (final)			(\$3,000,000)	
City of Modesto, #5175-210 (final)			(\$3,000,000)	
Russian River County Sanitation District, #5201-110 (final)	(\$1,942,225)			
San Luis Obispo (Los Osos), #5230-110	(\$7,500,000)			
Calaveras County Water District, #5249-110 (final)	(\$4,420,880)			
Placer County Sewer Maintenance District 1, #5275-110	(\$6,000,000)			
Heber Public Utility District, #5302-110 (final)	(\$6,000,000)			
Victor Valley Wastewater Rec Authority, #5376-110 (final)			(\$3,000,000)	
City of Tehachapi, #5563-110 (final)			(\$2,121,030)	
Susanville Sanitary District, #5727-110 (final)			(\$1,392,595)	
City of Redding, #5835-110 (final)			(\$1,233,052)	
City of East Palo Alto, #5956-110			(\$276,250)	
City of Los Angeles, #7055-110			(\$3,000,000)	
City of Stockton, #7085-110			(\$1,625,000)	
Santa Nella County Water District, #7132-110			(\$2,146,875)	
Earlimart Public Utility District, #7190-110 (final)			(\$359,707)	
Eastern Municipal Water District, #7203-110			(\$5,000,000)	
City of Rio Dell, #7401-110	(\$6,000,000)			
City of Redding, #7456-110 (final)			(\$1,682,280)	
City of Anaheim, #7620-110			(\$1,560,479)	
City of Anaheim, #7622-110 (final)			(\$374,383)	
City of Anaheim, #7630-110			(\$513,178)	
Planada CSD, #7649-110	(\$300,000)			
City of Yuba City, #7668-110			(\$3,000,000)	
Sutter County, #7732-110 (final)	(\$400,180)	(\$1,000,000)		
City of Anaheim, #7800-110 (final)			(\$923,344)	
City of Colfax, #7806-110 10 (final)	(\$3,319,000)			
Subtotal	(\$41,882,285)	(\$1,000,000)	(\$37,208,173)	(\$80,090,458)
Ending Balance	\$15,780,004	\$0	\$2,900,020	\$18,680,024

LEGAL REPRESENTATIONS

The County's attorney represents that the County complied with Proposition 218 requirements for setting rates

The County will be required to perform a two year educational outreach program because the Proposition 218 protest rate exceeded five percent.

The County's attorney has certified that the County holds sufficient property rights to enable the County to access, construct, operate, maintain, repair, monitor, and inspect the Project for the life of the Project or the term of the CWSRF financing, whichever is longer.

The County's attorney has represented that there is no pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program.

The County certified, on August 22, 2011, that it is not an urban water supplier as the term is understood pursuant to the provisions of Section 529.5 of the water code.

SPECIAL CONDITIONS

1. This FPA includes only the Project described above and does not include any associated projects that may have been referred to in the County's Project Report, dated April 2011. This approval does not guarantee that a CWSRF financing agreement will be awarded for this Project;
2. As determined by the County's credit review, the financing agreement is subject to the following conditions:
 - The County is pledging net revenues of Sewer Maintenance District 1.
 - The Recipient may not incur future senior debt. The Recipient's future debt may be on parity with CWSRF debt if policy conditions are met. (Section X, G1)
 - The Recipient shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times the total annual debt service.
 - The Recipient shall establish a Reserve Fund in an amount equal to one year's debt service prior to the construction completion date.
 - The Financing Agreement shall be limited to a maximum of \$58,376,044, unless new information supporting the credit review changes and a supplemental credit review is performed.
3. In accordance with the CWA and Section 106, the County shall obtain the necessary approvals and permits from the USACE, the SHPO, the Regional Water Board and the California Department of Fish and Game, prior to the start of any Project construction activities, and shall implement and abide by any measures and conditions of those approvals. The County shall provide the approvals and copies of permits to the Division prior to the issuance of a final finance agreement. Special conditions may be included in the final CWSRF financing agreement to assure compliance, if necessary;

4. The County may jeopardize CWSRF financing if construction begins prior to the PFC. Construction after the PFC and prior to issuance of the Financing Agreement is eligible for CWSRF funding;
5. The County will submit an Approval of Award (AOA) package. The Division, through the AOA package, will use the project bid results accepted by the County along with the final Project P&S to review final project eligibility and Performance Standards. After review and approval, the Division will prepare an amendment to the financing agreement consistent with the final eligibility determination and credit review. Signature of the amended agreement by the County will constitute agreement with the Division's decisions on the AOA package;
6. The County must comply with the Disadvantaged Business Enterprises and Davis-Bacon requirements and certify compliance with all federal laws;
7. The County must sign an initial financing agreement for the SMD 1 Upgrade Project on or before August 30, 2012. Division staff may approve up to a 120-day extension for good cause.
8. The County must submit an Approval of Award (AOA) package and start construction of the SMD 1 Upgrade Project by May 30, 2013. If the County selects an alternative project, this FPA and the initial agreement will be void.
9. If an alternative project is selected, the County must submit a complete application for the selected project to the Division, and the initial financing agreement must be executed or be executable by May 30, 2013. Division staff may approve up to a 120-day extension for good cause.
10. The final principal forgiveness amount may be modified based on the AOA determination, and the final financing agreement will be updated accordingly. The total principal forgiveness amount will not exceed \$6,000,000. The principal forgiveness can be used for one of the alternatives if an amended PFC is made before this one expires. After the expiration date the Division cannot guarantee that principal forgiveness funds will be available.
11. Unless the upper limit is modified in the future, principal forgiveness is capped at \$10 million per agency over the next three (3) SFY (July 1, 2010 – June 30, 2013).
12. The County is required to implement a public education program for two years beginning no later than October 2012 because the County received more than five percent opposition to their last wastewater rate increase;

DISTRIBUTION

cc: Ms. Pamela Creedon
Executive Officer
Central Valley Regional Water Board (via email)

Mr. Bob Crandall
Assistant Executive Officer
Central Valley Regional Water Board, Redding Office (via email)

Mr. Ken Landau
Assistant Executive Officer
Central Valley Regional Water Board, Sacramento Office (via email)

Mr. Richard Loncarovich
Assistant Executive Officer
Central Valley Regional Water Board, Sacramento Office (via email)

Mr. Rick Moss
Assistant Executive Officer
Central Valley Regional Water Board, Sacramento Office (via email)

Mr. Clay Rodgers
Assistant Executive Officer
Central Valley Regional Water Board, Fresno Office (via email)

Ms. Kathy Kane
Placer County
11476 C Avenue
Auburn, CA 95603

bcc: Robert Pontureri, DFA
Ahmad Kashkoli, DFA
Jennifer Toney, DFA
Lisa Lee, DFA
Cookie Hirn, DFA
Kelly Valine, DFA
Doug Wilson, DFA



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

**DIVISION OF FINANCIAL ASSISTANCE (DIVISION)
PRELIMINARY FUNDING COMMITMENT (PFC)
CLEAN WATER STATE REVOLVING FUND (CWSRF) PROGRAM
COUNTY OF PLACER (COUNTY)
SEWER MAINTENANCE DISTRICT (SMD) 1 WASTEWATER TREATMENT PLANT
UPGRADE PROJECT (PROJECT)
CWSRF PROJECT NO.: C-06-5275-110
DETERMINATION NO.: DFA-2011-48**

FINDINGS

1. The State Water Board, on March 17, 2009, adopted the amended *Policy for Implementing the CWSRF for Construction of Wastewater Treatment Facilities*;
2. The County's Project is a routine and non-controversial project that is consistent with the policies, regulations, and agreements the State Water Board has adopted for implementation of the CWSRF Program;
3. The County's Project is listed on the current CWSRF Project Priority List;
4. In accordance with the CWSRF Intended Use Plan principal forgiveness is available to disadvantaged communities;
5. As a small (less than 20,000 persons) disadvantaged community (median household income [MHI] less than 80 percent of the statewide MHI) with wastewater user rates more than 1.5 percent of the community's MHI, the County may receive 50 percent principal forgiveness for eligible Project costs up to \$6 million in principal forgiveness;
6. The County is the lead agency under the California Environmental Quality Act and prepared an Initial Study and Mitigated Negative Declaration (IS/MND; State Clearinghouse No. 2011042083) for the Project;
7. The County adopted the final IS/MND and a Mitigation Monitoring and Reporting Program, and approved the Project on July 12, 2011;
8. The County filed a Notice of Determination with the Placer County Clerk on July 15, 2011 and Governor's Office of Planning and Research on August 2, 2011;
9. The County incorporated mitigation measures or alterations into the Project to avoid or substantially reduce potentially significant environmental impacts;
10. The IS/MND and the supporting documents provided an adequate disclosure of the environmental relationships of all water quality aspects of the Project. The Project will not result in any significant adverse water quality impacts;

CHARLES R. HOPPIN, CHAIRMAN | THOMAS HOWARD, EXECUTIVE DIRECTOR

1001 I Street, Sacramento, CA 95814 | Mailing Address: P.O. Box 100, Sacramento, CA 95812-0100 | www.waterboards.ca.gov

11. As determined by the County's credit review, the financing agreement is subject to the following conditions;

- The County is pledging net revenues of Sewer Maintenance District 1.
- The Recipient may not incur future senior debt. The Recipient's future debt may be on parity with CWSRF debt if policy conditions are met. (Section X, G1)
- The Recipient shall covenant to establish rates and charges in amounts sufficient to generate net revenues equal to at least 1.10 times the total annual debt service.
- The Recipient shall establish a Reserve Fund in an amount equal to one year's debt service prior to the construction completion date.
- The Financing Agreement shall be limited to a maximum of \$58,376,044, unless new information supporting the credit review changes and a supplemental credit review is performed.

APPROVALS

Using the authority delegated by the State Water Board in the March 17, 2009, Policy amendment and incorporating the conditions in the foregoing Facilities Plan Approval, agreed to by Division staff and the County, I hereby:

1. Approve a CWSRF PFC of \$58,376,044 for the County's Project with a repayment period of 30-years at an interest rate of one half the general obligation bond rate obtained by the State Treasurers Office as of the date of the PFC, with \$6,000,000 in Principal Forgiveness. The first repayment shall be due one year after completion of construction;
2. Direct the Division staff to allocate \$58,376,044 consistent with the construction schedule and availability of funds.
3. The County must sign an initial financing agreement for the SMD 1 Upgrade Project on or before August 30, 2012. Division staff may approve up to a 120-day extension for good cause.
4. Withdraw this PFC if the County does not submit an Approval of Award (AOA) package and start of construction of the SMD 1 Upgrade Project, or a complete application for an alternative project that can be financed by May 30, 2013. Division staff may approve up to a 120-day extension for the alternative project, not the upgrade project, for good cause.

State Water Board action on this item will assist the Water Boards in reaching Goal 1 of the Strategic Plan Update: 2008-2012 to (1) implement strategies to fully support the beneficial uses for all 2006-listed water bodies by 2030.

Preliminary
Funding
Commitment


Ms. Elizabeth L. Haven, Deputy Director
Division of Financial Assistance

2/16/12
Date



March 2, 2012

Mr. James Durfee
Director, Facilities Services Department
County of Placer
11476 C Avenue
Auburn, California 95603

Subject: Financing Options for the PERC Water / SMD-1 Water Recycling Facility

Dear Jim:

Per your request, we are submitting this letter in response to your letter dated February 14, 2012 regarding PERC Water's options for funding of the PERC Water project under a State Revolving Fund (SRF) option and a public-private partnership option including public and private funding sources. These two options being considered by PERC Water are described below.

Option 1: State Revolving Fund (SRF) Funding

Since December 6, 2011, we have been working with SRF staff regarding the funding of the PERC Water project as described in our Customized Design Report (CDR) dated August 1, 2011, as subsequently updated based on our discussions since August 1, 2011. We appreciate the County Counsel submitting a letter to us confirming the decision by the Placer County Board of Supervisors on December 6, 2011 with respect to the satisfaction of the procurement method conducted by Placer County and that PERC Water had participated in a "competitive negotiation" in accordance with California Infrastructure Act (Cal. Govt. Code 5956 et seq.). We have enclosed a copy of Mr. Robert Sandman's letter dated February 23, 2012, and other various documents regarding SRF funding for the PERC Water project.

To date we have addressed the following concerns regarding the SRF option:

1. The CDR has been accepted as substantially complete by Jennifer Toney, State Water Resources Control Board Project Engineer.
2. The State Water Resources Control Board attorney has reviewed a copy of the Design-Build-Operate Agreement between PERC Water and the City of Adelanto and confirmed a similar agreement with Placer County would be acceptable under the SRF program.
3. The project scope has been discussed with State Water Resources Control Board environmental scientist Lisa Lee, who confirms amending the existing mitigated negative declaration (MND) would be acceptable in lieu of completing a new MND.
4. The PERC Water option would still be eligible for principle forgiveness at the same amount as the current upgrade option.

The outstanding items to confirm funding are as follows:

1. State Water Resources Control Board Bond Counsel review of tax related items. Information concerning this matter has been forwarded and is under review, and is enclosed with this letter. It is anticipated that this will not preclude the use SRF funds and we expect to receive a response regarding this review prior to the Placer County Board of Supervisors meeting on March 13th, 2012.

Should Placer County choose the PERC Water SRF option on March 13, 2012, the following tasks will need to be completed by Placer County to finalize SRF funding:

1. Amend the existing SMD-1 Mitigated Negative Declaration to revise the project description and affirm findings. We contacted Raney Planning and Management, Inc. and confirmed that such an addendum is appropriate and could be completed within 30 days of receiving a notice to proceed. A copy of the Raney Planning and Management, Inc.'s letter is enclosed with this letter;
2. Revise the project description and costs on the application form and request a revision to the State Water Resources Control Board Preliminary Funding Commitment;
3. Request State Water Resources Control Board staff to recommend State Water Resources Control Board approval of a waiver to the design-build procurement process (State Water Resources Control Board staff did not see this as a concern, but merely the process that must be followed when there is a deviation from the guidelines); and
4. Provide a new tax questionnaire.

All of these items, including the State Water Resources Control Board's staff review could likely be completed within 60 days, which will not negatively impact the compliance date issued by the Regional Water Quality Control Board. We are confident that SRF funding will be made available to the PERC Water project.

Option 2: Private Funding

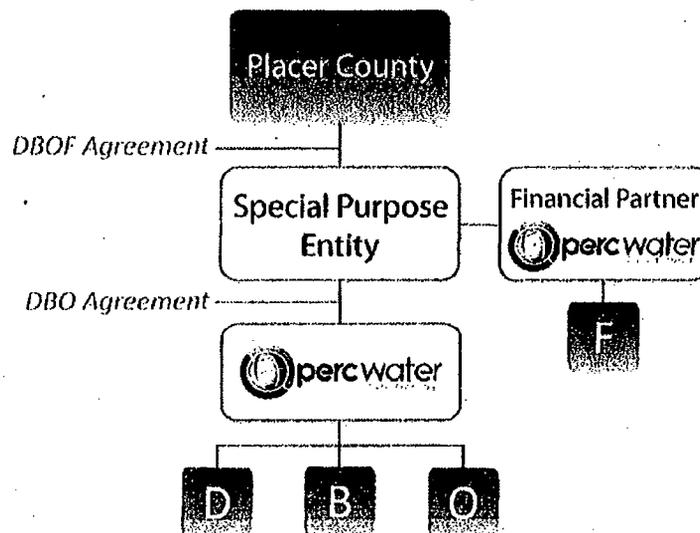
As part of our CDR, we included an option for private funding of the project under a 30-year concession contract whereby Placer County would not be required to provide any upfront funding for the PERC Water project, and funding would be provided by PERC Water and private equity funds resulting in a long-term concession service agreement for Placer County. Although this type of structure includes private funding, it is intended that during the concession term, ownership of the facilities will remain with Placer County and not with a private firm. Further, this structure is not considered privatization, as Placer County will remain the face of the utility to the residents of SMD-1 and retain control over setting rates with ratepayers.

Since last autumn, we have been advised by Placer County that private funding is not of interest to Placer County, and we understand that SRF funding is the preferred funding option to Placer County. However we have continued to model private funding and to work with multiple private equity firms in a parallel path to the SRF funding option.

Private Funding Structure

We have modeled the private funding option to utilize private equity and debt financing based on a 70/30 debt to equity ratio, which final leverage will be based on a credit review of Placer County. To date, the debt financing has been assumed as taxable debt, similar to how we financed the City of Santa Paula project, however we are currently exploring tax exempt financing to lower the weighted average cost of capital. The total capitalized project cost under the privately funded option, subject to finalization with Placer County staff, is approximately \$51 million, and following the assumed contribution by Placer County of \$8 million, the net private funding amount is \$43 million. We have modeled leveraging 70% of that amount for a debt financing of approximately \$30 million with the remaining \$13 million funded by at-risk equity. Important to point out is the private funding option is anticipated to be off-balance sheet to Placer County, and secured by the credit of Placer County and its ratepayers.

Under the private funding structure, all net project costs (i.e. net of the \$8 million contribution from Placer County) would be capitalized into a project company (typically referred to as a “Special Purpose Entity” or “SPE”) as shown below. The SPE would enter into a long-term concession agreement (referred to below as the “DBOF Agreement”) with Placer County for a fixed, predetermined fee structure for the 30-year concession term (subject to inflation). Included in the fee structure, we have modeled approximately \$30 million (in nominal dollars) of future capital expenditures over the 30-year term to maintain the high-quality facilities. These future capital expenditures will be privately funded by the SPE, thereby removing the risk from Placer County to fund equipment replacements and upgrades in the future.



Private Equity Partners

We are currently working with private equity firms that are familiar with PERC Water, Placer County and the PERC Water CDR and are interested in the PERC Water / Placer County project. Based on our

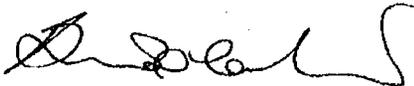
discussions to date with the various private equity firms, they will typically require the following steps in order to provide a firm commitment of equity capital for the PERC Water / Placer County project:

1. Obtain approval / establish a clear mandate from the Placer County Board of Supervisors to proceed with a private funding option for the project;
2. Based upon the parameters outlined in the PERC Water CDR and agreement on summary DBOF terms with Placer County, provide a preliminary commitment of equity capital to Placer County, subject to due diligence, debt financing, documentation and approval processes; and,
3. Complete due diligence, debt financing, documentation and approval processes, which typically include:
 - a. Completion of customary due diligence (e.g., environmental, regulatory, credit reviews);
 - b. Contractual term of not less than 30-years;
 - c. Monthly sewer rates are sufficient to cover concession fees;
 - d. Arrangement of debt financing (taxable or tax-exempt);
 - e. Confirmation that all concession payments flow through an enterprise fund structure;
 - f. Drafting of contractual agreements (e.g., the SPE agreement with PERC Water and the DBOF Agreement with Placer County); and
 - g. Final approval by the firm / underlying funds (based on the satisfactory completion of the steps above).

We look forward to presenting to the Placer Board of Supervisors on March 13, 2012, and will make available whatever time is needed to answer questions about PERC Water and our offering. If you have any questions, please call me at 949-375-4892.

Sincerely,

PERC Water Corporation



Brian D. Cullen
President

Encl: Letter from Wesley Strickland, Esq. to James Maughan, State Water Resources Control Board
Memorandum from Wesley Strickland, Esq. to Frances-Spivy-Weber, Vice Chair, State Water Resources Control Board
Letter from Placer County Counsel to Wesley Strickland, Esq.
Letter from Wesley Strickland, Esq. to Brian Cullen, PERC Water re: SMD-1 Procurement Process
Memorandum from Wesley Strickland, Esq. to Brian Cullen, PERC Water re: Tax-Exempt Financing for Proposed Placer County Transaction
Letter from Raney Planning & Management, Inc. to Rob Aragon, Aragon Solutions, Inc. re: CEQA for the PERC Water project

Cc: Rob Aragon, President, Aragon Solutions, Inc.

Brownstein | Hyatt
Farber | Schreck

C. Wesley Strickland
Attorney at Law
805.882.1490 tel
805.965.4333 fax
WStrickland@bhfs.com

February 27, 2012

James Maughan
Assistant Deputy Director, Division of Financial Assistance
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

RE: Questions Related to CWSRF Funding and Proposed Design-Build-Operate Project
Between Placer County Sewer Maintenance District 1 and PERC Water

Dear Mr. Maughan:

This letter is in response to your correspondence dated February 10, 2012 to James Durfee, Director of Facility Services for the County of Placer (County). That correspondence provided preliminary answers to several questions posed by the County related to whether Clean Water State Revolving Fund (CWSRF) financial assistance might be available for a design-build-operate (DBO) project with PERC Water to replace the wastewater treatment plant owned and operated by Placer County Sewer Maintenance District 1 (SMD1). This letter provides additional information regarding several of those questions.

Your letter to Mr. Durfee included the following question and answer:

1.c. Section XI.B.1 of the Policy for Implementing the CWSRF for Wastewater Treatment Facilities as amended in March 2009 delineates the two-phase selection process (request for qualifications (RFQ) and request for proposal (RFP)) for design-build projects. Is there any process that the County might complete that will satisfy this process without conducting an RFQ and RFP?

If the County selects the PERC proposal without going through the procurement process currently reflected in the CWSRF Policy for design build projects (i.e. RFQ, Technical Review Panel, and RFP), the PFC must be approved at the State Water Board level; the Division will not be able to approve a procurement process not reflected in the Policy. To receive CWSRF financing, the County must follow state procurement law. Although we cannot speak for

James Maughan
February 27, 2012
Page 2

the Board, Division staff anticipates that the Board will approve a PFC for a project procured in accordance with state procurement law.

The provision cited from the *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treat Facilities* (Policy) is part of the Approval of Award (AOA) process that follows execution of an initial financing agreement. As described in more detail in Exhibit A, the AOA process is used to ensure that the final project is consistent with the project described in the application, preliminary funding commitment and initial financing agreement, will in concept meet waste discharge requirements, and will comply with federal and state CWSRF program requirements. The AOA process is also used to establish performance standards for the project and to amend the financing agreement to finalize the completion of construction date, initiation of operation date and other terms as needed. Notably, the AOA process is not intended to provide SWRCB oversight of the applicant's procurement or contracting process. The Policy states clearly that procurement and other legal compliance matters are the sole responsibility of the applicant.

As described in Exhibit A, a problem posed by the current Policy is that it does not contain any guidance regarding the AOA process applicable to DBO projects pursuant to the California Infrastructure Finance Act (IFA). The Policy assumes the use of a competitive bidding process for traditional design-bid-build projects and an RFQ/RFP process for design-build projects, but does not appear to contemplate the competitive negotiation process for DBO projects. That omission creates a problematic ambiguity and might lead to rejection or inefficient processing of otherwise eligible and meritorious projects, such as the PERC Water proposal to replace the SMD1 wastewater treatment plant. As set forth in Exhibit A and separate communications with SWRCB Vice Chair Frances Spivy-Weber, PERC Water is currently in the process of proposing an amendment to the Policy.

Regardless of the ambiguity created by the Policy, it is clear that SMD1 has followed the procurement process mandated by state law in the IFA. As stated in the letter from Placer County Counsel (Exhibit B), on December 6, 2011 the Placer County Board of Supervisors determined that their consideration of PERC Water's unsolicited proposal in comparison to competitive bids on the County's SMD1 Wastewater Treatment Plant Upgrade and Expansion Project No. 04835 fulfilled the requirement in the IFA of a competitive negotiation process. For more information on the competitive negotiation process, please see Exhibit C.

While PERC Water understands from your answer to Question 1.c. above that the Division of Financial Assistance will defer to the SWRCB on the proper AOA process to follow for a DBO project pursuant to the IFA, we hope that you will accept as determinative the confirmation of the Placer County Board of Supervisors that it considered the PERC Water proposal in accordance with state procurement law. If you have any reason to doubt that the County has followed and fully satisfied the requirements of state procurement law, please let us know. In light of that conclusion, we hope and expect that the Division and SWRCB would approve

CWSRF financing to SMD1 for the proposed DBO arrangement in the short term, even without any change to the Policy.

In addition, your letter to Mr. Durfee included the following questions and answers:

- 1.f. Are there any restrictions through CWSRF regarding contracted third party operation of the treatment plant?

Yes. The CWSRF Program does not fund operation and maintenance (O&M) costs. There are also private activity restrictions associated with our revenue bonds, and we can only finance publicly owned facilities. The County should review the attached Tax Questionnaire to identify possible private activities associated with the PERC option. Division staff previously provided the Tax Questionnaire to Mr. Wes Strickland, PERC's legal counsel.

- 1.g. Are there any differences or restrictions in the CWSRF process between a design/build and design/build/operate?

Yes. The County will need to separate out the operational costs if a design/build/operate option is selected. The CWSRF Program does not fund O&M costs. As mentioned in the response to 1.f., there are private activity restrictions with our revenue bonds and public ownership requirements.

In a previous, unrelated instance, the CWSRF Program received an application from an agency requesting that CWSRF finance a design/build/operate project. After legal review of the contract between the public agency and the private operator, the Division determined that we could not fund the project because the public agency was giving up their ownership rights to the WWTP during the operation period. The CWSRF Program can only fund publicly owned treatment works. If the County selects PERC for a design/build/operate option, the Division highly recommends that a draft contract between PERC and the County be submitted for legal review as early as possible.

The proposed contract between SMD1 and PERC Water would segregate costs between design and construction activities on one hand and operations activities on the other hand. As currently envisioned, there would be two separate contracts. While the application for CWSRF financing would be submitted by SMD1, it is PERC Water's understanding that SMD1 would only apply for CWSRF financing for the design and construction portion of the project. In addition, the

James Maughan
February 27, 2012
Page 4

PERC Water proposal does not provide for private ownership of any facilities; all facilities would be publicly owned by SMD1 at all times. Therefore the only remaining issue is whether proposed operations by PERC Water would be affected by private activity restrictions associated with CWSRF revenue bonds.

The private activity restrictions on CWSRF bonds are derived from Internal Revenue Code Section 103 and Revenue Procedure 97-13. The specific rules are described in Exhibit D. In summary, the proposed operations contract between SMD1 and PERC Water would not constitute private business use of the wastewater treatment facilities, because the contract would fall within a safe harbor created by Revenue Procedure 97-13 for "80% Periodic Fixed Fee Arrangements." Because the operations contract would not constitute private business use, the tax exemption for interest on CWSRF bonds would not be affected by the proposed transaction. Therefore, there is no private activity restriction that would impact the ability of the SWRCB to provide CWSRF financing for the design and construction portion of the proposed DBO transaction between SMD1 and PERC Water.

Thank you for the opportunity to provide further information on the questions posed by the County. If you would like to discuss these issues further, please do not hesitate to contact us.

Sincerely,



C. Wesley Strickland

cc: Brian Cullen, PERC Water
Rob Aragon, PERC Water
Sheri Lasick, Sylvir Consulting, Inc.
James Durfee, County of Placer
Anthony La Bouff, Placer County Counsel

Exhibits

- A - Memorandum re SWRCB Policy for CWSRF and the Infrastructure Finance Act dated February 24, 2012
- B - Correspondence from Placer County Counsel dated February 23, 2012
- C - Correspondence re Placer County Sewer Maintenance District 1 Procurement Process dated December 5, 2011
- D - Memorandum re Tax-Exempt Financing for Proposed Placer County Transaction dated February 24, 2012

Memorandum

C. Wesley Strickland
Attorney at Law
805.882.1490 tel
805.965.4333 fax
WStrickland@bhfs.com

DATE: February 24, 2012
TO: Frances Spivy-Weber, Vice Chair, State Water Resources Control Board
FROM: Wes Strickland & Chris Frahm
RE: SWRCB Policy for CWSRF and the Infrastructure Finance Act

1. Introduction

This memorandum addresses a difficulty that has been identified for implementation of the State Water Resources Control Board (SWRCB) policy for the Clean Water State Revolving Fund (CWSRF). The current policy creates a process for the Division of Financial Assistance (DFA) to evaluate and distribute funds to local governmental wastewater projects based on two procurement methods: traditional design-bid-build (DBB); and design-build (DB). The current policy does not, however, contain a process for design-build-operate (DBO) projects pursuant to the California Infrastructure Finance Act (IFA). That omission might lead to rejection or inefficient processing of otherwise eligible and meritorious projects, and this memorandum suggests a potential solution.

2. Current SWRCB Policy for CWSRF Projects

The SWRCB adopted its current *Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities* (Policy) in March 2009.¹ The Policy sets forth the SWRCB process for application and award of CWSRF loans and other financial assistance for the benefit of local governmental entities. Once an application for construction financing has been filed and determined by the DFA to be complete, the project is placed on the Statewide List in one of several priority classes. If, based on overall CWSRF funding levels and the priority classes established in the Statewide List, the DFA determines that funding will be available for a specific project that is ready to proceed, it will issue a preliminary funding commitment followed by an initial financing agreement.²

¹ See http://www.waterboards.ca.gov/water_issues/programs/grants_loans/srf/finalpolicy0309.shtml.

² Policy, Section IV (Priority System and Intended Use Plan) and Section IX (Approval of Construction Financing).

After execution of the initial financing agreement, the applicant must prepare and submit an Approval of Award (AOA) package, which includes detailed information about equipment procurement, plans and specifications, or a request for proposals (RFP) in the case of a DB project. As stated in the Policy:

The primary focus of the [AOA process] will be to determine if the equipment, design, or design-build proposal is consistent with the facilities described in the [application and financing agreement], if the proposed Project, in concept, will meet [waste discharge requirements], and if it will comply with applicable federal and State CWSRF Program requirements.³

The AOA process is also used to establish performance standards for the project, which are tested during the first year of operation,⁴ and to amend the financing agreement to finalize the completion of construction date, initiation of operation date and other terms that may be necessary in light of new or modified details about the project. Notably, the AOA process is not intended to provide SWRCB oversight of the applicant's procurement or contracting process. The Policy states simply that procurement and other legal compliance matters are the exclusive responsibility of the applicant:

Neither the USEPA nor the State Water Board will be involved in resolving bid or contractual disputes. Bid or contractual dispute resolution will be the sole responsibility of the recipient.⁵

The applicant's Authorized Representative must certify that the applicant has complied, or will comply, with all applicable State laws. The recipient will be responsible for assuring compliance with applicable State laws.⁶

Recipients are required to comply with [disadvantaged business enterprise] and other applicable federal statutes and authorities [listed in Appendix K].⁷

The Policy does refer to the applicant's procurement method in the context of the AOA process, but the only purpose in referring to the procurement method in that section is to ensure that the ultimate plans and specifications for the project are consistent with the approved application and will be capable of meeting waste discharge requirements and performance standards. Therefore, the Policy distinguishes between varying procurement methods only as necessary to identify how the AOA process works in each of those circumstances, since each procurement method has its own internal process.

³ Policy, Section XI.A.

⁴ Policy, Section XI.D and Section XIV.B (Project Performance Report and Certification).

⁵ Policy, Section XI.B.

⁶ Policy, Section XI.E.

⁷ Policy, Section XI.F.

For the DBB procurement method, which uses a traditional competitive bidding process, the AOA process is based on “the bid accepted by the applicant consistent with state contracting laws.” That approach is reasonable because the accepted bid provides SWRCB staff with concrete information about the design and final costs of the project to allow preparation of a final amended financing agreement.⁸ In addition, the AOA process recommends, but does not require, a value engineering study prior to submittal of the AOA package.⁹

The Policy establishes a separate AOA process for applicants which use the DB procurement method. In such circumstances, the AOA package is based on the DB proposal selected by the applicant. The Policy states that the AOA process for a DB project will follow the requirements for the DBB method, plus a special DB selection process. The Policy includes a two-step DB selection process that utilizes a request for qualifications (RFQ) followed by a request for proposals (RFP). The process requires the use of a technical review panel that assists the applicant in preparing the RFP and evaluating proposals. Final selection of a proposal must be based on best value, as determined by qualitative factors (e.g., design solution, management and schedule) and price. The Policy expressly states that failure to complete a technical review effort may result in the project being ineligible for CWSRF funding.¹⁰

It should be noted that while the laws governing DBB procurement are well known and consistent across California, the DB process is less unified. There are several state statutes that authorize local governments to undertake wastewater projects through the DB procurement method,¹¹ as well as a number of city and county charters that also authorize DB based on home rule.¹² The DB selection process set forth in the Policy is not fully consistent with the rules adopted by the state and local governments to govern DB procurements. For example, the Policy requires the use of a technical review panel, while state law does not,¹³ and the Policy requires selection based on best value, while state law allows the use of either best value or lowest price.¹⁴ The legislative authority for these elements of the Policy is unknown. While use of a technical review panel and best value selection can be helpful in certain procurements, we respectfully wonder whether those elements should be mandated by the SWRCB through the Policy.

Currently, the Policy does not contain any provisions regarding the AOA process for wastewater projects procured on a DBO basis under the IFA. Neither the DBB nor DB processes from the Policy would apply directly to projects under the IFA, since the IFA relies on procurement by competitive negotiation, rather than the competitive bidding process required for DBB or RFQ/RFP process required for DB.

⁸ Policy, Section XI.B.

⁹ Policy, Section XI.C.

¹⁰ Policy, Section XI.B.1 and 2. Approximately the same process was included in the July 2007 and September 2008 versions of the Policy.

¹¹ Cal. Pub. Contract Code §§ 20133 (applying to counties), 20193-20195 (applying to counties, cities and special districts).

¹² For example, the City of Los Angeles charter contains a provision authorizing DB procurement.

¹³ Cal. Pub. Contract Code §§ 20193-20195 (no technical review requirement).

¹⁴ Cal. Pub. Contract Code § 20193(d)(4).

3. Procurement Under the IFA

The Legislature adopted the IFA in 1996 as an independent legal authority to supplement the DBB and DB procurement methods for infrastructure.¹⁵ The IFA authorizes a wide variety of local governmental agencies to enter into contracts with private entities to design, build, finance and operate, or any combination thereof, certain types of infrastructure projects, including those for "sewage treatment, disposal, and water recycling."¹⁶

Regarding procurement method, the IFA provides that the local governmental agency "shall ensure that the contractor is selected pursuant to a competitive negotiation process."¹⁷ The competitive negotiation process is defined as follows:

The competitive negotiation process shall utilize, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility. The selection criteria shall also ensure that the facility be operated at fair and reasonable prices to the user of the infrastructure facility services. The competitive negotiation process shall not require competitive bidding.¹⁸

The IFA goes on to limit the requirements for competitive negotiation to those quoted above by stating:

Other than these criteria and applicable provisions related to providing security for the construction and completion of the facility, the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code or this code that relates to public procurements.¹⁹

Thus, other than the requirements quoted above, the Legislature intentionally did not decree what constitutes competitive negotiation. Instead, the IFA grants substantial discretion to local governmental agencies to determine what process to use for specific projects. This is consistent with the statutory statement of legislative intent that the act "may be used by local governmental entities when they deem it appropriate in the exercise of their discretion."²⁰ This also represents sound public policy because one of the strengths of public-private partnerships is that such arrangements allow private entities to recommend innovative technical solutions that would be hard to compare through a strict bidding process, particularly with respect to the life-cycle cost of an innovative project.

¹⁵ Cal. Govt. Code §§ 5956-5956.10.

¹⁶ Cal. Govt. Code § 5956.4(n).

¹⁷ Cal. Govt. Code § 5956.5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Cal. Govt. Code § 5956.2.

While it is not defined in the IFA, the term “competitive negotiation” appears to require two elements: (i) competition; and (ii) negotiation. The IFA expressly provides that the first concept of competition does not require bidding. This firm normally advises public agency clients that in order to maintain competition, a local governmental entity should keep in mind the availability of alternative, i.e., competitive, proposals for procuring the infrastructure project. Those other proposals may include a range of alternative procurement methods, such as DBB or DB. There is no requirement that competitive negotiation include a formal RFQ/RFP process as is required for DB projects, so long as reasonably competitive proposals are considered by the local governmental agency. The agency should negotiate each competitive proposal to a point that is commercially reasonable and then compare the value of each proposal to the local governmental agency and its constituents. A local governmental agency may pursue a bidding process in order to determine the best result from a DBB procurement process, and then compare the result to negotiated proposals from private entities, including unsolicited proposals made under the IFA. Such a process would be sufficient to constitute competitive negotiation.

4. The Problem and Proposed Resolution

The problem facing the DFA and potential applicants is that the Policy does not establish an AOA process for DBO projects pursuant to the IFA, because the competitive negotiation process established by a local governmental agency may not include either bids (like DBB) or a two-step RFQ/RFP process (like DB). Recent conversations with DFA staff indicate that absence from the Policy of an AOA process for DBO projects creates a problematic ambiguity and might lead to rejection or inefficient processing of otherwise eligible and meritorious projects.

In order to resolve this problem, we respectfully suggest that the current Policy be amended to add a new Section XI.B.3, which provides as follows:

Applicants requesting CWSRF assistance for projects authorized by the California Infrastructure Finance Act, Cal. Govt. Code §§ 5956 *et seq.*, will be required to complete the “Approval of Construction Financing” process and a competitive negotiation process established by the applicant. The financing agreement will be based on the private entity proposal accepted by the recipient.

We would be happy to provide additional information as needed to support the SWRCB in this matter.



Placer County Counsel

COUNTY ADMINISTRATIVE CENTER • 175 FULWEILER AVENUE
AUBURN, CALIFORNIA 95603-4581
(530) 889-4044 • FAX: (530) 889-4069

ANTHONY J. La BOUFF
County Counsel

GERALD O. CARDEN
Chief Deputy

February 23, 2012

Wesley Strickand, Esq.
Brownstein Hyatt Farber Schreck, LLP
21 East Carrillo Street
Santa Barbara, CA 93101

Dear Mr. Strickland:

This letter follows up our February 14, 2012 phone call and your February 7, 2012 e-mail.

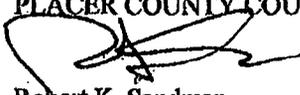
On December 6, 2011, the Placer County Board of Supervisors considered various matters associated with the County's Wastewater Management and Compliance Direction. See, Item 3, 12/6/11 Board Agenda, copy attached. The Board's discussion on December 6, 2011 included consideration of an unsolicited proposal from PERC Water Corporation that contains delivery options including design-build, design-build-operate, and design-build-operate-finance for a treatment plant to replace the County's existing SMD 1 Treatment Plant located on Joeger Road in Auburn, CA.

The Board on December 6, 2011 adopted by unanimous vote a motion as follows: "Adopt Alternative A including direction to staff to proceed with a regional solution for SMD #1 compliance and return to the Board no later than March 13, 2012 with recommendations for a final Board decision." A copy of the Board's December 6, 2011 minutes, as adopted on January 10, 2012, is attached. The attached minutes provide additional detail on the adopted Motion.

The Board's discussion on December 6, 2011 included confirmation from the Board that PERC Water Corporation, following the delivery of competitive bids on the County's SMD 1 Wastewater Treatment Plant Upgrade and Expansion Project No. 04835, had participated in a "competitive negotiation process" in accordance with California's Infrastructure Finance Act (Cal. Govt. Code 5956 et seq.; See also, Govt. Code 5956.5). The Board's December 6, 2011 action included direction to County Staff to accept other design build submittals until December 31, 2011. No other submittals were received by December 31, 2011.

Please call if you have any questions.

Very truly yours,
PLACER COUNTY COUNSEL'S OFFICE


Robert K. Sandman

RKS
Enclosures

COUNTY OF PLACER
BOARD OF SUPERVISORS
TUESDAY, DECEMBER 6, 2011
SUMMARY ACTION
9:00 a.m.

Jack Duran, District 1
Robert Weygandt, District 2, Chairman
Jim Holmes, District 3
Kirk Uhler, District 4
Jennifer Montgomery, District 5, Vice Chairman
County Administrative Center, 175 Fulweiler Avenue, Auburn, CA 95603

Thomas Miller, County Executive
Anthony J. La Bouff, County Counsel
Holly Heinzen, Assistant County Executive
Ann Holman, Clerk of the Board

Materials related to an item on this Agenda submitted to the Board after distribution of the agenda packet are available for public inspection at the Clerk of the Board of Supervisors Office, 175 Fulweiler Avenue, Auburn, during normal business hours. Placer County is committed to ensuring that persons with disabilities are provided the resources to participate fully in its public meetings. If you require disability-related modifications or accommodations, including auxiliary aids or services, please contact the Clerk of the Board. If requested, the agenda shall be provided in appropriate alternative formats to persons with disabilities. All requests must be in writing and must be received by the Clerk five business days prior to the scheduled meeting for which you are requesting accommodation. Requests received after such time will be accommodated only if time permits.

MEETING LOCATION:
COMMUNITY DEVELOPMENT RESOURCE AGENCY
3091 COUNTY CENTER DRIVE
AUBURN, CA 95603

9:00 a.m.

FLAG SALUTE -- Led by Chairman Weygandt.

STATEMENT OF MEETING PROCEDURES - Read by Clerk.

PUBLIC COMMENT -- Marilyn Jasper, speaking on behalf of Public Interest Coalition, requested the Board to re-evaluate the entire legislative platform program and consider forming a citizens advisory committee, and if the program is to continue to change the procedures and the policies to ensure the public is noticed before any position is taken.

SUPERVISOR'S COMMITTEE REPORTS - None:

TIMED ITEMS TO BE DISCUSSED AT THE TIME SHOWN

9:05 a.m.

1. COMMUNITY DEVELOPMENT RESOURCE AGENCY/PLANNING/THIRD-PARTY APPEAL OF THE PLANNING COMMISSION'S APPROVAL OF THE HOMEWOOD MOUNTAIN RESORT SKI AREA PROJECT (PSUB 20080052) AND FINAL ENVIRONMENTAL IMPACT REPORT (SCH NO. 2008092008) - The Board considered a third-party appeal of the Planning Commission's action to approve the Conditional Use Permit, Planned Development Permit and the Vesting Tentative Subdivision Map for the Homewood Mountain Resort project, and to approve amendments to the West Shore Area General Plan and to approve a Development Agreement for the Homewood Mountain Resort project. Staff recommended and the Board approved the following actions:

1. Denied the third-party appeal filed by Friends of the West Shore, the League to Save Lake Tahoe and the Tahoe Area Sierra Club;
2. Adopted Resolution 2011-327 certifying the Final Environmental Impact Report for the Homewood Mountain Resort project (SCH No. 2008 092008);
3. Adopted Resolution 2011-328 approving the proposed amendments to the Plan Area Statement Uses and Boundaries in the West Shore Area General Plan;
4. Adopted Ordinance 5659-B approving a Development Agreement with the Homewood Village Resorts,

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LLC, for the Homewood Mountain Resort project;

- 5. Upheld the action of the Planning Commission and approved the Conditional Use Permit and Planned Development Permit, and
- 6. Upheld the action of the Planning Commission and approved the Vesting Tentative Subdivision Map for the Homewood Mountain Resort project.

MOTION Montgomery/Holmes/Unanimous

9:20 a.m.

- 2. **PUBLIC WORKS/GENERAL PLAN AMENDMENT/ADOPTING THE PLACER PARKWAY CORRIDOR AND THE HIGHWAY 65 BYPASS ALIGNMENTS** - Conducted a Public Hearing; adopted Resolution 2011-329 certifying a Final Environmental Impact Report (FEIR); and, adopted Resolution 2011-330 approving a General Plan Amendment adopting depicting the Placer Parkway Corridor and Highway 65 Bypass Alignments in the Placer County General Plan Policy Document.

MOTION Uhler/Duran/Unanimous

9:30 a.m.

- 3. **FACILITY SERVICES/WASTEWATER MANAGEMENT AND COMPLIANCE DIRECTION** – The Board considered alternatives for compliance with Regional Water Quality Control Board regulatory requirements for Sewer Maintenance District 1 (SMD 1), which serves North Auburn, Christian Valley, Bowman and Applegate, and:

- 1. Direct staff to proceed with a regional solution for SMD 1 compliance and return to the Board no later than March 13, 2012 with recommendations for a final Board decision; or
- 2. Direct staff to return to your Board on December 13, 2011 with a request to award the SMD 1 Wastewater Treatment Plant Upgrade and Expansion Project 04835 to the lowest responsive bidder.
- 3. Provide other direction as the Board deems appropriate.

Information Addendum – December 1, 2011 Principal Forgiveness on State Revolving Fund Loan.

MOTION Uhler directing staff to continue to work under Alternative A with further exploration of the public/private partnership opportunity and return back to the Board with comparison between the stay at home option and the regional option, but with that comparison being drawn between the design build operate option and the regional option, specifically the FERC proposal with their guarantees included.

MOTION died for lack of a second.

BOARD OF SUPERVISORS
DECEMBER 6, 2011

PAGE 3

MOTION Holmes/Montgomery VOTE 2:3 (Duran, Uhler, Weygandt No) to move forward with the upgrade and expansion of the North Auburn Plant. MOTION failed.

MOTION Montgomery/Duran/Unanimous to adopt Alternative A including direction to staff to proceed with a regional solution for SMD #1 compliance and return to the Board no later than March 13, 2012 with recommendations for a final Board decision.

Alternative A

Dec. 2011-Mar 2012:

Dec. 31, 2011:

No later than Mar. 13, 2012:

Mar. 19, 2012:

Confirm Viability of Preferred Regional Option
 Obtain Preliminary Funding Committee from SRF for Upgrade Project to preserve credit and preliminary funding approval
 County Board Final Decision on Whether to Continue to Pursue a Regional Sewer Project or Award the SMD 1 Upgrade and Expansion Project Bid

- Need Determination of Viable Governance/Ownership Structure, Agreement from All Stakeholder, Key Deal Points, Confirmation of Ability to Finance Project, Defined Legal Process for Proceeding, Agreement on Engineering and Design Options

Deadline to Hold SMD #1 Upgrade Bids (\$1,500/day After 12/31/2011 if bid is awarded)

- Rebid of project would result in 4-6 month delay
Additional costs of \$1.4 million-\$1.8 million and an

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Unknown bid result.**Sept 1, 2015****Full Compliance with Discharge Standards**

If this alternate is selected, the upgrade and expansion of SMD 1 would remain a fall back option until March 19, 2012, in the event a regional solution is not possible.

Staff was directed to also accept other Design Build submittals until 12/31/11 that would be considered along with other SMD 1 upgrade options as part of the fall back option. Further it was requested that staff consider potential opportunities for regional approaches for public/private partnerships that may exist at the current SMD 1 site.

Further direction was provided to staff to collaborate with staff of the City of Auburn, City of Lincoln, and SPMUD including clarification as to the City of Auburn's intent to participate in a Regional Sewer Project. Board members indicated a willingness to provide financial support to City ratepayers to offset costs that might otherwise be incurred in pursuing a regional solution.

In addition, it was requested that staff develop a side by side comparison of Brown and Caldwell and Lincoln option; begin the project description for the environmental review process and determine whether the PERC project can utilize SRF financing.

DEPARTMENT ITEMS TO BE CONSIDERED FOR ACTION AS TIME ALLOWS
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DEPARTMENT ITEMS:**4. COUNTY COUNSEL/CLOSED SESSION REPORT:**

(A) \$54957.6 - CONFERENCE WITH LABOR NEGOTIATORS – *The Board discussed Labor Negotiations with some of its Labor Team, DSA, no discussion of PPEO. The Board received a report and gave direction.*

(a) Agency designated representatives: Tom Miller, Nancy Nittler, Therese Leonard, Anthony J. La Bouff
Employee organization: PPEO. DSA

CONSENT AGENDA – Consent Agenda approved with action as indicated. The Board convened as the Redevelopment Agency Board for item #11. MOTION Holmes/Uhler/Unanimous

5. BOARD OF SUPERVISORS – Approved minutes of October 24, 25, and November 8, 2011.

6. COMMITTEES & COMMISSIONS:

a. Lincoln Veterans Memorial Hall Board of Trustees - Approved reappointments of Kent Parsell representing VFW 3010 Richard Lercari representing VFW 3010, Len Valasek representing American Legion Post 264, Samuel Silvas representing American Legion Post 264, John McCulloch representing Alternate American Legion Post 264, Robert Bruce representing Alternate American Legion Post 264, and Manuel Nevarez representing Alternate Board of Supervisors, as recommended by Supervisor Weygandt.

b. First Five Children and Families Commission – Approved the appointment of Phillip Williams to Seat #3 and the re-appointment of Dr. Richard Burton to Seat #2, Mal-Ling Schummers to Seat #4, Calvin Walstad to Seat #8, and Rina Rojas to Seat #9 as requested by the First 5 Children and Families Commission.

7. COMMUNITY DEVELOPMENT RESOURCE AGENCY:

a. Placer County Bond Screening Committee - Approved Resolution 2011-230 adopting additions to the Placer County Bond Screening Committee Rules And Procedures, dated January 1, 2007.

b. Nichols Drive Industrial Park, Tract #974 - The Board took the following actions:

a. Accepted the subdivision improvements as complete.

b. Authorized the Chairman to sign the Subdivision Improvement Replacement Agreement.

c. Instructed the Clerk of the Board to prepare the Subdivision Improvement Replacement Agreement for recording; and

d. Resolution 2011-321 adopted accepting Prosperity Drive, Progress Drive, and Integrity Court into the County Maintained Mileage System.

Brownstein Hyatt
Farber Schreck

December 5, 2011

C. Wesley Strickland
Attorney at Law
805.882.1490 tel
805.965.4333 fax
WStrickland@bhfs.com

Brian Cullen, President
PERC Water Corporation
959 South Coast Drive, Suite 315
Costa Mesa, CA 92626

RE: Placer County Sewer Maintenance District 1 Procurement Process

Dear Mr. Cullen:

You have asked whether the process followed by Placer County Sewer Maintenance District 1 (District) to date is sufficient to constitute competitive negotiation as required by the California Infrastructure Finance Act (IFA) for entry into a public-private partnership contract with PERC Water Corporation (PERC Water). As explained below, the design-bid-build comparator process followed by the District is legally sufficient according to state law, and the IFA does not require any other process for the Board of Supervisors to exercise its discretionary authority and enter into a contract with PERC Water.

Overview of California Public Contracting Laws

Competitive bidding for public contracts has a long history in the United States. It has been widely seen as useful to guard against favoritism, waste of public funds, extravagance, fraud and corruption and to obtain the best economic result for the public. As shown below, however, competitive bidding is not legally required in all circumstances, and the Legislature has recognized weaknesses of the traditional design-bid-build process in contracting for construction and operation of infrastructure. Therefore, the Legislature has adopted alternative methods to achieve the same policy goals.

Under California law, a local governmental agency may enter into a contract without following any particular selection process, such as competitive bidding, unless it is expressly required to do so by statute or local regulation.¹ It is important to distinguish between legal requirements imposed on an agency by the Legislature and the exercise of discretion by the agency's governing body; the former may be enforced by the courts, while the latter will not be

¹ See *Construction Industry Force Account Council v. Amador Water Agency*, 71 Cal.App.4th 810, 815 (1999); *Davis v. City of Santa Ana*, 108 Cal.App.2d 669, 677 (1952) (no statute required city to request bids for solid waste collection and disposal contract); *Swanton v. Corby*, 38 Cal.App.2d 227, 229 (1940). See generally *Public Works and Contracts*, 53 Cal.Jur.3d § 22 (2011).

interfered with in a lawsuit brought by a taxpayer or other person.² While there are powerful public purposes served by competitive bidding, there is no all-pervasive public policy that requires all agencies to engage in that practice.³ Rather, the Legislature imposes competitive bidding requirements of various types on agencies when it determines it is in the public interest to do so. Competitive bidding provisions are construed fairly and reasonably by the courts and will not be extended beyond their purpose.⁴ They must be read in light of the reason for their enactment,⁵ or they will be applied where they were not intended to operate and thus deny public agencies the authority to deal with problems in a sensible, practical way.⁶ Competitive bidding is not used where it does not produce any advantage, or it is practically impossible to obtain what is required and observe such form.⁷

Regarding infrastructure, the Legislature has adopted the Local Agency Public Construction Act (LAPCA), which requires that many types of local governmental agencies, including counties, comply with the competitive bidding procedures of the Public Contract Code for awarding of contracts for public works construction, unless the agency follows one of several alternative procurement methods.⁸ Where the Legislature has adopted an alternative procurement method, the relevant statute constitutes an independent authority that does not incorporate the general provisions of the Public Contract Code except by express reference. While alternative procurement methods are carve-outs from the LAPCA, the Legislature is free to adopt whatever alternative methods it chooses because the LAPCA itself is a construction of the Legislature rather than a public policy "default" as it is sometimes represented.

Each alternative procurement method includes its own process for selection of a private contractor. Selection processes vary widely, from negotiation with a single private entity to requests for proposals and competitive bidding similar to that under the LAPCA. Examples of several alternative procurement methods established by the Legislature are listed in the table below.

² *Davis, supra*, 108 Cal.App.2d at 678-79 ("The question of the wisdom or discretion of the city council in awarding the contract without accepting bids is not before the court.... The discretionary powers of municipal authorities will not be interfered with in a suit by a taxpayer for an injunction in the absence of fraud or palpable abuse. Matters in which questions as to judgment, wisdom or policy alone are involved are not subject to control by injunction.").

³ *Construction Industry Force Account Council, supra*, 71 Cal.App.4th at 815, quoting *San Diego Service Authority for Freeway Emergencies v. Superior Court*, 198 Cal.App.3d 1466, 1469 (1988).

⁴ *Associated Builders and Contractors, Inc. v. San Francisco Airports Commission*, 21 Cal.4th 352 (1999).

⁵ *Graydon v. Pasadena Redevelopment Agency*, 104 Cal.App.3d 631, 636 (1980).

⁶ *Associated Builders and Contractors, Inc., supra*; *Construction Industry Force Account Council, supra*, 71 Cal.App.4th at 815.

⁷ *Graydon, supra*, 104 Cal.App.3d at 636-37.

⁸ Cal. Pub. Contract Code §§ 20125 (advertisement for bids), 20128 (award to lowest responsible bidder).

EXAMPLE ALTERNATIVE PROCUREMENT METHODS	
TYPE OF CONTRACT	SELECTION PROCESS
Design-build for public buildings by certain counties ⁹	Bidding with selection based on lowest cost or best value
Repair or replacement of public works in case of emergency ¹⁰	Competitive bidding not required, contractor paid cost of time and materials plus up to 15 percent
Acquisition of information technology or telecommunications goods and service by the state Department of General Services ¹¹	Variety of competitive means, including sole sourcing, competitive bidding and reverse auctions, as appropriate for each technology
Contracts for professional services from private architectural, landscape architectural, engineering, environmental, land surveying or construction management firms ¹²	Agency discretion on procedure to assure retention based on demonstrated competence and qualifications
Contracts by cities to employ persons with special competence in financial, economic, accounting, engineering, legal or administrative matters ¹³	Competitive bidding not required ¹⁴
IFA: infrastructure public-private partnerships ¹⁵	Competitive negotiation ¹⁶

The Infrastructure Finance Act

The Legislature adopted the IFA in 1996 based on findings that local governmental agencies may need access to private capital to develop new infrastructure or replace deteriorating infrastructure already in place, and without such ability.¹⁷ The Legislature declared its intent "that local governmental agencies have the authority and flexibility" to implement public-private partnerships for infrastructure¹⁸ and the following:

⁹ Cal. Pub. Contract Code § 20133.

¹⁰ Cal. Pub. Contract Code § 20134(a).

¹¹ Cal. Pub. Contract Code §§ 12100 *et seq.* (information technology), 12120 *et seq.* (telecommunications).

¹² Cal. Govt. Code § 4526.

¹³ Cal. Govt. Code § 37103.

¹⁴ See *City and County of San Francisco v. Boyd*, 17 Cal.2d 606 (1941).

¹⁵ Cal. Govt. Code §§ 5956-5956.10.

¹⁶ Cal. Govt. Code § 5956.5.

¹⁷ Cal. Govt. Code § 5956.

¹⁸ Cal. Govt. Code § 5956.1.

It is the intent of the Legislature that this chapter be construed as creating a new and independent authority for local governmental agencies to utilize private sector investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities. To that end, this authority is intended to supplement and be independent of any existing authority and does not limit, replace, or detract from existing authority. This chapter may be used by local governmental entities when they deem it appropriate in the exercise of their discretion. It is the intent of the Legislature that this act create no new governmental entities.¹⁹

As is clear from the language of the statute, the Legislature intended the IFA to be an independent legal authority to supplement the traditional design-bid-build procurement process for infrastructure. Thus, the IFA should not be interpreted by reference to the Public Contract Code without an express reference.

The IFA²⁰ authorizes local governmental agencies, including the District, to enter into contracts with private entities to design, build, finance and operate, or any combination thereof, certain types of infrastructure projects, including those for "sewage treatment, disposal, and water recycling."²¹ The statute provides that the local governmental agency "shall ensure that the contractor is selected pursuant to a competitive negotiation process."²² The competitive negotiation process is defined as follows:

The competitive negotiation process shall utilize, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility. The selection criteria shall also ensure that the facility be operated at fair and reasonable prices to the user of the infrastructure facility services. The competitive negotiation process shall not require competitive bidding.²³

¹⁹ Cal. Govt. Code § 5956.2.

²⁰ Cal. Govt. Code §§ 5956-5956.10.

²¹ Cal. Govt. Code § 5956.4(n).

²² Cal. Govt. Code § 5956.5.

²³ *Id.*

In addition, the IFA specifies certain prohibited actions in competitive negotiations:

The competitive negotiation process shall specifically prohibit practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit governmental agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section that would subject those employees to the prohibition of [Government Code] Section 87100.²⁴

The IFA goes on to limit the requirements for competitive negotiation to those quoted above by stating:

Other than these criteria and applicable provisions related to providing security for the construction and completion of the facility, the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code or this code that relates to public procurements.²⁵

Thus, other than the requirements quoted above, the Legislature intentionally did not decree what constitutes competitive negotiation. Instead, the IFA grants substantial discretion to local governmental entities to determine what process to use for specific projects. This is consistent with the statutory statement of legislative intent that the act “may be used by local governmental entities when they deem it appropriate in the exercise of their discretion.”²⁶ This also represents sound public policy because one of the strengths of public-private partnerships is that such arrangements allow private entities to recommend innovative technical solutions that would be hard to compare through a strict bidding process, particularly with respect to the life-cycle cost of an innovative project.

Linguistically, the term “competitive negotiation” appears to require two elements: (1) competition; and (2) negotiation. The IFA expressly provides that the first concept of competition does not require bidding, and imposition of a bidding process would seem inconsistent with the second concept of negotiation, since negotiated terms would not normally be available to all bidders on an equal basis. We normally advise agency clients that in order to maintain competition, a local governmental entity should keep in mind the availability of alternate, i.e., competitive, proposals for procuring the infrastructure project. Those other

²⁴ *Id.*

²⁵ *Id.*

²⁶ Cal. Govt. Code § 5956.2. This is also consistent with the legislative history of the IFA. The Senate Rules Committee stated in its analysis of AB 2660 (1996) that the criteria discussed above are the minimum requirement for competitive negotiation, and that “projects may be proposed by the private entity and selected by the governmental agency at the discretion of the governmental agency.” Senate Rules Committee, Senate Floor Analysis, at 4 (August 9, 1996).

proposals may include a range of alternative procurement methods, such as design-bid-build or design-build. There is no requirement that competitive negotiation include a formal process of requests for proposals, as long as reasonably competitive proposals are considered by the local governmental agency. The local governmental agency should negotiate each competitive proposal to a point that is commercially reasonable and then compare the value of each proposal to the local governmental agency and its constituents. A local governmental agency may pursue a bidding process in order to determine the best result from a design-bid-build procurement process and then compare the result to negotiated proposals from private entities under the IFA. Such a process would be sufficient to constitute competitive negotiation.²⁷

Beyond the requirement of a competitive negotiation process, the IFA contains a number of substantive protections for the local governmental agency and the public, by mandating certain contractual terms.²⁸

The District Process

It is our understanding that the District provides sewer service to approximately 7,900 equivalent dwelling units in the North Auburn area. The District's Wastewater Treatment Plant (Plant 1) was constructed in 1961 and uses biological and filtration processes that cannot meet current regulatory standards included in its discharge permit from the Regional Water Quality Control Board. The District initiated a Plant 1 Upgrade Project in 2009 in order to meet all regulatory requirements at an average dry weather flow treatment capacity of 2.7 million gallons per day. A compliance schedule which protected the District from fines and third-party lawsuits expired on March 1, 2010, resulting in mandatory minimum fines of approximately \$111,000 per year from that date until the Upgrade Project is completed.

The District has primarily pursued the Upgrade Project through a traditional design-bid-build procurement process. The agency approved an agreement with Owen Psomas for preliminary design of the Upgrade Project on March 10, 2009 and an agreement for final design and construction management on April 27, 2010. The District sought bids from contractors on July 12, 2011, which resulted in the submission of 11 bids on September 22, 2011. The District is currently considering those bids.

On a parallel path, the District has continued to look for ways to procure the Upgrade Project in a cost-effective manner. PERC Water approached District staff in September 2009 regarding a potential public-private partnership for an alternative to the Upgrade Project pursuant to the IFA. District staff included discussion of the PERC Water option in regular updates to the Board of Supervisors on the design-bid-build procurement process, for example at its April 27, 2010 meeting. In parallel with the design-bid-build process administered by the

²⁷ This opinion is consistent with that of other commentators on the IFA. A widely recognized treatise on California law has stated that under the IFA, "[q]ualified infrastructure improvement projects may be procured through a 'competitive negotiation process' by which the design and construction of the project is determined on a negotiated basis." See Miller and Starr, *California Real Estate* 3D § 27:28 (2010).

²⁸ Cal. Govt. Code § 5956.6.

District, PERC Water developed a proposal to bring the District into regulatory compliance through a design-build, design-build-operate or design-build-operate-finance arrangement pursuant to the IFA. PERC Water submitted the technical, non-financial terms of its proposal to the District on August 1, 2011 and its financial terms on September 22, 2011, the date on which bids were due under the District's design-bid-build process. Subsequent to the September 22, 2011 submittal of financial terms, PERC Water received input and guidance from District staff specific to financial and technical considerations, which resulted in modified financial terms that were resubmitted to District staff on November 21, 2011.

Analysis

As described above, the IFA has relatively few (but important) requirements for a competitive negotiation process. The process followed by the District to date would satisfy those requirements, and the IFA does not mandate any additional process the District would need to complete before entering into a contract with PERC Water.

The first requirement under the IFA is that the local government agency "utilize, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility."²⁹ The process of discussions and negotiations between District staff and PERC Water would provide an adequate basis for the District to make a determination satisfying this requirement. PERC Water provided information regarding its qualifications and experience to District staff and to members of the Board of Supervisors in the autumn of 2009. In addition, District staff had the opportunity to visit facilities designed, built and operated by PERC Water in Tracy, California on January 19, 2010 and Santa Paula, California on June 20, 2011. No further investigation would be legally required by the District in order for it to deem PERC Water competent and qualified to undertake the actions contained in its proposal.

The second requirement under the IFA is that the final arrangement "ensure that the facility be operated at fair and reasonable prices to the user of the infrastructure facility services."³⁰ In the case of the Upgrade Project, the cost of the wastewater treatment infrastructure facilities will be paid for by wastewater ratepayers within the District. PERC Water has included detailed financial terms in its proposal to the District, so that the agency can evaluate the impact on wastewater rates. In addition, by following the design-bid-build process through bidding, the District has a good comparator to evaluate whether PERC Water's proposal would result in fair and reasonable prices to District wastewater ratepayers. That comparison demonstrates that not only would PERC Water's proposal be fair and reasonable, but it would achieve significant savings for District ratepayers.

²⁹ Cal. Govt. Code § 5956.5.

³⁰ *Id.*

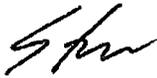
Brian Cullen
December 5, 2011
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Lastly, the IFA prohibits certain unlawful actions, such as rebates, kickbacks and agency employee conflicts of interest. None of those actions have occurred as part of the PERC Water proposal process.

As described above, competitive negotiation under the IFA does not require any particular process beyond that set forth in the statute. Rather, the IFA expressly provides the local governmental agency significant discretion to design such a procurement process. The requirement of competitive negotiation may be satisfied through comparison between the results of a traditional design-bid-build process and discussions with a single private entity under the IFA. Regarding the Upgrade Project, the District has followed a design-bid-build process to a point sufficient to allow comparison between such an arrangement and the PERC Water proposal. Such a process is sufficient to constitute competitive negotiation, and the District does not need to take further actions before entering into a contract with PERC Water pursuant to the District's discretionary authority.

If you have any questions regarding the contents of this letter, please do not hesitate to ask.

Sincerely,



C. Wesley Strickland

CWS/gml

SB 599741 v1:000009.0162

Memorandum

Michelle L. Pickett
Attorney at Law
805.882.1422 tel
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MPickett@bhfs.com

DATE: February 24, 2012
TO: Brian Cullen
FROM: Wes Strickland & Michelle Pickett
RE: Tax-Exempt Financing for Proposed Placer County Transaction

1. Introduction

A question has arisen about whether the tax-exempt status of revenue bonds issued by the State Water Resources Control Board (SWRCB) for its Clean Water State Revolving Fund (CWSRF) program would be jeopardized by providing financial assistance to a potential design-build-operate (DBO) project between Placer County Sewer Maintenance District 1 (SMD1) and PERC Water. Stated simply, the issue is whether following the SMD1-PERC transaction interest on the CWSRF bonds would remain excludable from gross income under Section 103 of the Internal Revenue Code of 1986 (IRC), or if the bonds would become "private activity bonds" to which Section 103 does not apply?

2. The Internal Revenue Code and Revenue Procedure 97-13

Interest on bonds issued by states or political subdivisions is generally not includable in gross income if the bonds finance governmental purposes and certain other requirements are satisfied.¹ In contrast, "private activity bonds" are state or local bonds issued for non-governmental use in a trade or business and secured by payments from property used for private activities or issued for private loans. Interest earned from private activity bonds is not tax exempt unless they are "qualified bonds" under IRC Section 141(e), a question which is not addressed in this memorandum.

A government-issued bond is a private activity bond only if it meets both the "private business use test" and the "private security or payment test."² If the bonds at issue do not satisfy either one of these tests, then they would not be private activity bonds, but would be regular government-issued bonds that are tax-exempt under IRC Section 103.

¹ IRC Section 103.

² IRC Section 141(a)(1).

2.1. *Private Business Use Test*

The private business use test is met if more than 10 percent of the bond proceeds are used for any private business, i.e., a trade or business carried on by any person other than a governmental unit. "Private business use" can arise by private ownership of the bond-financed property, or by private use of the property pursuant to a lease, management contract or other arrangement under certain circumstances. The Internal Revenue Service has established rules for what types of management contracts do not give rise to a private business use in Revenue Procedure 97-13, a copy of which is attached to this memorandum.

Revenue Procedure 97-13 establishes safe harbors for several types of management contracts that do not meet the private business use test. First, a contract that provides for the operation of a facility that consists predominantly of public utility property³ does not constitute a private business use if the only compensation to the private operator (Entity) is the reimbursement of actual and direct expenses of the Entity and its reasonable administrative overhead expenses.

Second, a contract that meets each of the following requirements (1), (2) and (3) is entitled to safe harbor:

- (1) The compensation of the Entity must be reasonable for the services rendered and cannot be based, in whole or in part, on a share of the net profits from the operations of the financed property. The following types of compensation formulas are acceptable under this Revenue Procedure and do not constitute a share of net profits: a percentage of the gross revenues or expenses, but not both; a capitation fee;⁴ a per-unit fee;⁵ or a productivity reward equal to a stated dollar amount based on increases or decreases in gross revenues or reductions in total expenses (but not both).
- (2) The contract must be described in one of the following ways:
 - **80% Periodic Fixed Fee Arrangements.** At least 80 percent of the Entity's annual compensation is based on a periodic fixed fee. The term of the contract plus renewal options cannot exceed the lesser of 80% of the reasonably expected useful life of the financed property or 20 years. A one-time stated dollar amount incentive award during the term of the contract, where the compensation automatically increases when a gross revenue or expense target (but not both) is reached, does not violate the periodic fixed fee requirement.

³ In this context, public utility property means property used predominantly in the trade or business of the furnishing or sale of water or sewage disposal services.

⁴ A capitation fee is defined in Rev. Proc. 97-13 as a fixed periodic amount for each person for whom the service provider (Entity) or the qualified user (Public Agency) assumes the responsibility to provide all needed services for a specified period so long as the quantity and type of services actually provided to covered persons varies substantially. A capitation fee may include a variable component of up to 20 percent of the total capitation fee designed to protect the service provider against risks such as catastrophic loss. Further, as revised by Rev. Proc. 2001-39, the capitation fee may be automatically increased according to a specified, objective, external standard that is not linked to the output or efficiency of the facility.

⁵ A per-unit fee is defined in Rev. Proc. 97-13 as a fee based on a unit of service provided and is most often seen in the medical services context. As revised by Rev. Proc. 2001-39, a per-unit fee may be automatically increased according to a specified, objective, external standard that is not linked to the output or efficiency of the facility.

- 50% Periodic Fixed Fee Arrangements. Either at least 50 percent of the Entity's annual compensation is based on a periodic fixed fee or all of the compensation is based on a capitation fee or a combination of the two. The term of the contract plus renewal options cannot exceed five years, and the contract must be terminable by the public agency on reasonable notice, without penalty or cause, at the end of the third year of the contract term.
- Per-Unit Fee Arrangements in Certain Three-Year Contracts. All of the compensation is based on a per-unit fee or a combination of per-unit and periodic fixed fees. The term of the contract plus renewal options cannot exceed three years, and the contract must be terminable by the public agency on reasonable notice, without penalty or cause, at the end of the second year of the contract term.
- Percentage of Revenue or Expense Fee Arrangements in Certain Two-Year Contracts. All of the compensation is based on a percentage of fees charged or a combination of per-unit and percentage of revenue or expense fee. The term of the contract plus renewal options cannot exceed two years, and the contract must be terminable by the public agency on reasonable notice, without penalty or cause, at the end of the first year of the contract term. This type of arrangement is limited in use.

(3) Based on all of the facts and circumstances, the public agency's ability to exercise its rights, including cancellation rights, cannot be substantially limited. This requirement is considered satisfied if the following are met:

- Not more than 20 percent of the public agency's voting power is vested in the Entity and its directors, officers, shareholders or employees;
- Any overlapping board members do not include the chief executive officers of the Entity and the public agency; and
- The Entity and the public agency are not related parties.

2.2. Private Security or Payment Test

The private security or payment test is met if the payment of principal of, or interest on, more than 10 percent of the proceeds of the bond issue is directly or indirectly (i) secured by an interest in the property used for a private business use, (ii) secured by an interest in payments with respect to private business use property, or (iii) derived from payments with respect to property or borrowed money used for a private business use.

3. Analysis and Conclusion

Under the proposed project, PERC Water would design, construct and operate a replacement facility for the existing SMD1 wastewater treatment plant. SMD1 would finance the construction costs by borrowing from the CWSRF. The issue addressed by this memorandum is whether such a proposed project would jeopardize the tax-exempt status of interest on CWSRF

bonds issued by the SWRCB. That question is answered by whether the proposed transaction would result in private business use of the new SMD1 facility.

As an initial matter, it is clear that the SMD1 facility would be public utility property subject to the rules in Revenue Procedure 97-13. SMD1 would at all times continue to own the facility, so that the only question is whether continuing operations by PERC Water pursuant to an operations contract would constitute private business use. Because the proposed operations contract would not meet the private business use test, an analysis of the private security or payment test is unnecessary.

PERC Water has proposed that it would operate the SMD1 wastewater treatment facility for 20 years. As set forth in Chapter 8 of the PERC Water proposal and shown in the table below, compensation for operations would be split into several components. Each of those components is either fixed or based on cost reimbursement. The final agreement on compensation could be expressed in terms of a periodic fixed fee for most elements, i.e., Fixed O&M Costs, Fixed Energy Costs and Annual Capital Replacement Reserve, with the remaining elements being variable based on cost reimbursement, i.e., Variable O&M @ 1.83 MGD and Variable Energy Costs @ 1.83 MGD.

Annual Operations & Maintenance Costs (1.7 MGD)	Cost (\$)
Property / Earthquake / Flood Insurance	County
Fixed O&M Costs	1,002,551
Variable O&M @ 1.83 MGD	395,839
Fixed Energy Costs	84,663
Variable Energy Costs @ 1.83 MGD	379,156
Annual Capital Replacement Reserve	662,800
Total Annual O&M Costs	2,525,009

The PERC Water proposal would meet the requirements of the safe harbor for 80% Periodic Fixed Fee Arrangements. Regarding (1) above, there is no element of sharing net profits from the SMD1 facility, since PERC Water would be paid a fixed fee for its operations services, with the County paying mere cost reimbursement for non-fixed components. Regarding (2) above, at least 80 percent of operations compensation would be paid as a periodic fixed fee, and the term of the contract would be 20 years, within the time limits. The expected life of the SMD1 facility would be at least 30 years, so that 20 years is the relevant limiter. Regarding (3) above, there is no relationship between SMD1 and PERC Water, and PERC Water would have no ownership or contractual right to limit SMD1's ability to exercise its rights, including cancellation rights. Thus, the proposed transaction would fall within a safe harbor established by Revenue Procedure 97-13 for operations or management contracts.

Because the proposed operations contract would fall within a safe harbor established by Revenue Procedure 97-13, it would not constitute private business use of the SMD1 facilities by PERC Water. The tax-exempt status of CWSRF bonds issued by the SWRCB would not be jeopardized.

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December 6, 2011

Mr. Rob Aragon
Aragon Solutions, Inc.
1875 Ladera Drive
Lincoln, CA 95648

Dear Mr. Aragon:

We appreciate the opportunity to provide our input on the CEQA processing questions included in your recent email. As you rightly mentioned, Raney is currently on Placer County's list of approved environmental consultants, and we are responding to your email from that perspective, with a particular interest in ensuring that all County projects fully comply with CEQA and yet move expeditiously through the approval process. Raney is familiar with the SMD-1 WWTP site located north of Joeger Road and the fact that Placer County has been evaluating two primary alternatives for expanding treatment capacity. One of the alternatives, which involves upgrading the existing SMD-1 WWTP north of Joeger Road, would create a total treatment capacity of 2.7 Mgal/d, which would provide capacity for growth until 2035.

Your email indicates that the proposed PERC facility would similarly provide an initial treatment capacity of 2.7 MGD. Therefore, the PERC design, at least in terms of treatment capacity needed to accommodate the County's projected growth, is consistent with the long-term expansion upgrade of SMD-1 that has already been evaluated by the County in the adopted Mitigated Negative Declaration. In addition, from the rendering you submitted, it appears that the proposed PERC facility can be accommodated on the existing SMD-1 WWTP site footprint with little modifications to the existing site. From the limited information provided to Raney to date, it appears that the proposed PERC facility option would not generate additional significant impacts beyond those identified in the adopted Mitigated Negative Declaration. Though in order to confirm this, Raney would need to adequately review the adopted MND. Notwithstanding this, pursuant to CEQA Guidelines Section 15164, the proposed PERC facility could likely be adequately evaluated in an Addendum to the already adopted Mitigated Negative Declaration. Raney could probably prepare an Addendum within 30 days from Notice to Proceed. Per CEQA Guidelines Section 15164 an addendum need not be circulated for public review but can be included in or attached to the adopted negative declaration. Assuming the County concurs with this approach, the Addendum could go before the Board for approval within a relatively short time frame of 2-3 months depending upon staff's availability for review and comment. Please remember that the above information is only based on the limited information we have received to date.

Please do not hesitate to contact me should you have any questions on the above.

Thank you,

Tim Raney, AICP
President

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SMD #1 Compliance Alternatives Financial Summary

	Regional with Auburn (SRF Loan)	Regional without Auburn (SRF Loan)	Psomas Upgrade (SRF Loan)	PERC Upgrade (Revenue Bond)	PERC Upgrade (SRF Loan)
Capacity	1.7 mgd	1.7 mgd	2.7 mgd	2.7 mgd	2.7 mgd
Total Project Cost	\$94,710,000	\$73,000,000	\$62,300,000	\$61,170,000	\$61,170,000
Project Expenditures to Date	\$0	\$0	\$0	\$0	\$0
Auburn Project Cost	\$28,700,000	\$0	\$0	\$0	\$0
SRF Loan Principal Forgiveness	\$7,500,000	\$7,500,000	\$6,000,000	\$0	\$0
Net Placer County Share of Project Costs	\$58,510,000	\$65,500,000	\$52,600,000	\$61,170,000	\$55,170,000
Placer County's Percentage Share	62%	100%	100%	100%	100%
M&O - Capital Portion (estimated monthly rate)	\$21.21	\$27.15	\$16.73	\$25.88	\$21.25
M&O - Treatment, Collection, R&R Portion (est. monthly rate)	\$61.03	\$63.38	\$56.30	\$50.99	\$50.99
Estimated Total County M&O Fees (2012)	\$82.24	\$90.53	\$73.03	\$76.87	\$72.24
Initial Connection Fee - Project Specific Cost Portion	\$3,660	\$3,735	\$9,652	\$10,092	\$7,119
Initial Connection Fee - All Other Costs Portion	\$6,766	\$6,766	\$1,500	\$1,500	\$1,500
Estimated Total County Connection Fee (2012)	\$10,426	\$10,501	\$11,152	\$11,592	\$8,619
Type of Financing	SRF Loan ¹	SRF Loan ¹	SRF Loan ¹	Revenue Bonds	SRF Loan ¹
Annual County Debt Service Payments	\$2,814,929	\$3,181,986	\$2,879,382	\$3,917,755	\$3,216,793
Total County Debt Repayment	\$84,447,883	\$95,459,580	\$57,587,632	\$117,532,656	\$64,335,852
Amortization	30 Years	30 Years	20 Years	30 Years	20 Years
Cash Contribution	\$4,785,000	\$5,580,000	\$8,000,000	\$9,000,000	\$7,000,000
PV of \$28M Auburn Subsidy	\$16,331,905 ²	\$0	\$0	\$0	\$0
Total County Share of Costs (2012 dollars)	\$78,764,633	\$88,977,173	\$69,973,096	\$92,807,613	\$78,961,200
Reduction to SMD #1 M&O Fee from \$35M Subsidy ³	\$99,881,538	\$94,557,173	\$77,973,096	\$101,807,613	\$85,961,200
Reduction to Auburn M&O Fee from \$35M Subsidy	8.65	16.56	16.56	16.56	16.56
	10.57	0	0	0	0

¹ County has an executed Preliminary Funding Agreement from the State Revolving Fund (SRF) funding for the Psomas Upgrade option. Regional and PERC have not yet applied for SRF funding. Regional project is subject to approval by the Division of Financial Assistance at the staff level. PERC will require additional review and approval by the SWRC Board due to the method of procurement and private management contract.

² Actual subsidy is subject to negotiation. Subsidy of \$16.3 million is based on the City of Auburn contribution \$2,245,000 and \$200,000 per year (inflated at 2%). Nominal value of the \$16.3 million subsidy is approximately \$28 million.

³ The amount presented is the average per unit subsidy per month over a 30 year term. SMD #1 units are assumed at 8,480 in 2017 with growth of 120 units per year. Units in Auburn are assumed at 6,972 units in 2017 with 24 new units per year. Subsidy presented is based on a total subsidy present value of \$35 million. Subsidy PV is discounted based on 3% interest rate over 30 years.

PERC provided SRF and private equity funding options but did not provide cost information on the private funding option. In the event that PERC does not receive SRF funding approval, the County could pursue a revenue bond option, or may continue to negotiate with PERC over private funding. The Revenue Bond rate is assumed at 5.0% and the SRF loan rate is 2.2%.

The County may elect to allocate the subsidy between connection fees and M&O fees. Every \$1 million (in 2012 dollars) in subsidy provides \$1,000 of subsidy for 1,000 connections.

For the Psomas and PERC Upgrade options, estimated M&O fee is based on a planned 20 year repayment of a 30 year financing.

Funding of future expansion of regional plant is unclear at this time. City of Lincoln needs to address any additional funding that will be required for additional capacity. Assuming a \$4,300 future capacity component of the connection fee and 4,000 future units, the County should have approximately \$17 million to allocate to developing future capacity at Lincoln over time. Any contract between the County and the City should clearly address how the expansion would be funded and such funding should be mutually agreeable.



SMD #1 Rate Subsidy by Present Value of 30 year Subsidy
March 5, 2012

PV of Subsidy	Nominal Annual Subsidy	Average M&O		
		Subsidy per User	2017 M&O Subsidy per User	2046 M&O Subsidy per User
\$10,000,000	\$ 500,604	\$ 4.08	\$ 4.92	\$ 3.49
\$20,000,000	1,001,209	8.16	9.84	6.98
\$30,000,000	1,501,813	12.25	14.76	10.46
\$35,000,000	1,752,115	14.29	17.22	12.21

Subsidy amounts above are for SMD #1 only.

For Regional Project with Auburn, approximately \$16.3 million in 2012 dollars would be necessary to cover the Auburn Portion of the SRF loan debt service.

Nominal annual subsidy is discounted at the borrowing rate of 2.2%.

Assumed growth of 120 units per year results in 8,480 units in 2017 and 11,960 units in 2046.