

FY 2006

**Clean Water State Revolving Fund
Intended Use Plan**



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FY 2006
Clean Water State Revolving Fund (CWSRF)
Intended Use Plan (IUP)

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**FY 2006
CLEAN WATER SRF INTENDED USE PLAN**

I. INTRODUCTION

The FY 2006 Intended Use Plan (IUP) is prepared in accordance with the provisions of the Water Quality Act of 1987 (Act), Section 606 C and Chapter 375 (Attachment A) of the Board rules.

The Board is continuing a long range plan to protect the future health of the Clean Water State Revolving Fund (CWSRF) while providing financial assistance for wastewater collection and treatment infrastructure to Texas local governments. A water quality based priority rating process provides control over the amount of loans made each year while not requiring applicants to expend funds and efforts preparing applications for which funds may not be available. This provides a means for the Board to meet federally mandated requirements while offering some borrowers additional interest subsidies.

A. List of Projects

The FY 2006 IUP contains an alphabetic listing of 59 projects totaling \$473,839,750 from entities that responded to a survey of all eligible applicants. Of these 59 projects, all were ranked by population category for construction projects. No nonpoint source project was received and 1 project was not ranked (Table 1 A).

Population Categories	Total Number of Eligible Projects By Category	Total Cost of All Categories
A 3,000 or fewer	24	90,920,000
B 3,001 to 10,000	14	142,931,750
C 10,001 to 25,000	10	99,183,000
D 25,001 to 100,000	2	34,145,000
E 100,001 to 500,000	0	0
F 500,001 or greater	9	106,660,000
H Non-Point Source Projects	0	0
Total of All Categories	59	\$473,839,750

All applicants for construction funds will be invited to apply for the federal equivalency funds of approximately \$50,000,000 (dependent on the State of Texas budget allocation in the FY 2006 federal budget) upon Board approval of the IUP. After all federal equivalency funds are committed, the Board will inform the remaining applicants for construction funds of the availability of non-federal equivalency funds.

B. Disadvantaged Projects

For FY 2006 the Board is authorized by the state Legislature to provide up to \$25 million in CWSRF program funds for zero or one percent loans to eligible communities that qualify as disadvantaged. The Board, at its December 16, 2003 meeting, approved rules establishing

CWSRF communities funding. Specific provisions regarding disadvantaged communities funding can be found on Page 4, (Disadvantaged Communities Funding), Page 6 (Distribution of Funds to Disadvantaged Communities), Page 8 (Notice of Availability of Funds), Page 3 (Short Term Goals of the CWSRF) and Page 11 (Terms of Financial Assistance-Interest Rates for Disadvantaged Communities Loans).

Eighteen disadvantaged projects applied for funds. Projects up to the twenty-five million dollar cap will be notified at the same time as the first round of letters informing entities of the availability of the federal equivalency funds.

Disadvantaged Entities	Loan Amount	Population Category
Avery	\$810,000	A
Cooper	\$2,840,000	A
Jarrell	\$7,895,000	A
Lyford	\$9,455,000	A
Nueces RA	\$10,215,000	A
Refugio Co WCID#1	\$1,320,000	A
Roscoe	\$1,480,000	A
Roxton	\$2,540,000	A
Trinidad	\$750,000	A
Wolfe City	\$985,000	A
Bonham	\$2,000,000	B
Bowie	\$383,000	B
Hidalgo Co. MUD #1	\$11,365,000	B
La Joya	\$6,721,000	B
Los Fresnos	\$5,415,000	B
Yoakum	\$11,057,750	B
Donna	\$15,705,000	C
Rio Grande City	\$23,095,000	C
	\$114,031,750	

II. LONG AND SHORT-TERM GOAL STATEMENTS [606 (C)(2)]

A. Long Term Goals of the CWSRF

1. The long term goal of the State Water Pollution Control Revolving Fund is to maintain a living Program to restore and maintain the chemical, physical and biological integrity of the State's waters that is responsive to changes in State priorities and needs. Progress toward meeting this goal will be documented by providing information on strategic assessment of changing needs and ongoing or completed changes aimed at addressing those needs.
2. To maintain the fiscal integrity of the SRF and to assure a continuous enhancement of the fund for future generations. Progress toward meeting this goal will be documented by discussion of changes to lending rate policies, loan monitoring activities and default information.

3. To maintain the Fund into perpetuity. Progress toward meeting this goal will be provided via reporting on the annual capacity modeling and changes in capacity.

B. Short Term Goals of the CWSRF

1. The Board will continue to develop and employ programs to facilitate funding and implementation of nonpoint source projects which are consistent with an approved nonpoint source (NPS) management plan pursuant to the Act, §319. This will include assessing and modifying rules and procedures to maximize use of the program. Progress toward meeting this goal will be documented by providing information on rule or process changes aimed at improving use of the nonpoint source funding.
2. The Board will continue to meet with stakeholders including potential applicants, the Texas Commission on Environmental Quality and the Texas Soil and Water Conservation Board to increase awareness of the CWSRF as a funding alternative for identified management plan projects which address nonpoint source and estuary problems. Progress toward meeting this goal will be provided through reports on activities conducted and loans made.
3. The Board will strive to maximize use of the fund to provide funding for projects that are designed to meet the needs of the State. This includes providing special assistance to disadvantaged communities to allow them to meet their specific wastewater treatment needs. The TWDB will use the one-page Environmental Benefits Form for all CWSRF loan commitment closings to measure the effectiveness of the project funding. The Environmental Benefits Form will be applied to projects on the FY 2006 CWSRF IUP and to all prior year commitments that close in FY 2006. These results will be reported in the FY 2006 CWSRF Annual Report.

III. DEVELOPMENT OF THE CWSRF INTENDED USE PLAN

A. Solicitation of Project Information

In accordance with Board rules (§375.17), project information was solicited from all eligible applicants by letter. The required information consists of:

- a description of the proposed facilities;
- the status of any required permit application, including projected effluent limitations;
- the estimated total project cost;
- an estimated schedule for planning, design and construction of the proposed project;
- a statement as to whether the applicant is under enforcement by EPA or the TCEQ; and
- such other information as may be requested by the Executive Administrator.

All projects submitted in a timely manner were rated and ranked within six categories according to six population groups. The Intended Use Plan (IUP) establishes the maximum amount of

funds available for loans by including funding thresholds within each group.

B. Project Categories

In order for a project to receive a priority ranking in the IUP, the applicant must submit the required information form, signed by a representative of the applicant, not later than March 22, 2005.

After Board staff rated the proposed projects, they were listed in the appropriate funding categories as follows:

- Category A - existing populations of 3,000 or fewer;
- Category B - existing populations from 3,001 to 10,000;
- Category C - existing populations from 10,001 to 25,000;
- Category D - existing populations from 25,001 to 100,000;
- Category E - existing populations of 100,001 to 500,000;
- Category F - existing populations of 500,001 or greater; and

Table 1 is an alphabetic listing of all projects proposed for FY 2006. Table 1A lists the non-ranked project.

Tables 2A through 2F list the projects in ranking order for each category, along with cost categories and discharge requirements.

C. Disadvantaged Communities Funding

CWSRF Program funds of up to twenty-five million dollars per year will be made available for loans to disadvantaged communities.

1. **Eligibility** - The Board staff determines eligibility for the disadvantaged community loan program. Only those entities with a population no greater than 25,000 are eligible (population categories A, B, and C).

To be eligible to receive zero or one (1) percent loans the applicant must be either:

- a. A political subdivision:
 - (1) that is a disadvantaged community; or
 - (2) for a project serving an area that:
 - (i) is located outside the boundaries of the political subdivision; and
 - (ii) meets the definition of a disadvantaged community; or
- b. An owner of a community water system that is ordered by TCEQ to provide service to a disadvantaged community, provided that the financial assistance is for the sole purpose of providing service to a disadvantaged community.

AND,

Meets the definition of a disadvantaged community now or will as a result of a proposed project.

2. **Definition**

Disadvantaged community means the service area of a public water system that has an adjusted median household income which is no more than 75% of the median state household income for the most recent year for which statistics are available. There are two methods to determine the adjusted median income.

a. Adjusted median household income =

$$\frac{2000 \text{ Annual Median Household Income} \times \text{current Texas Consumer Price Index}}{2000 \text{ Texas Consumer Price Index}}$$

OR

b. Using data from a survey approved by the executive administrator of a statistically acceptable sampling of customers in the service area completed within the last 12 months⁷. The necessary information will be provided by the board to the applicant during the solicitation process.

AND

1. if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to 1.0%; or
2. if the service area is charged for water and sewer services, has a Combined Household Cost Factor for water and sewer rates that is greater than or equal to 2.0%.

Household Cost Factor = $\frac{\text{Average Yearly Water Bill}}{\text{Adjusted Median Household Income}}$
Combined Household Factor = $\frac{\text{Average Yearly Water Bill} + \text{Average Yearly Sewer Bill}}{\text{Adjusted Median Household Income}}$
Average Yearly Water Bill = (Average # of persons per household x 2,325 gallons/person/month) x (Proposed Monthly Water rate x 12) PMW = Cost of proposed project less funds received from other sources
Average Yearly Sewer Bill = (Average # of persons per household x 1,279 gallons/person/month) x (Monthly Sewer rate x 12)

If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household should be included in calculating the household cost factor or the combined household cost factor.

IV. **CRITERIA AND METHOD OF DISTRIBUTION OF FUNDS**

The discussion below of the distribution of funds and funding cycles for projects reflects the requirements of Board rules. Reference is made to a "funding line." The term "funding line" refers to the point on the ranked lists where funds available for loans would be expended. Note that an actual funding "line" does not appear on the ranked tables. The "line" will be adjusted downward if a project

above the line declines or fails to submit a timely application.

Congress has continued to appropriate funds for CWSRF capitalization grants each year since the original period of authorization ended in 1994. As a condition of receiving CWSRF capitalization grants, the Board must impose certain federal requirements of projects that receive any portion of the funds "directly made available by" capitalization grants. As described below, all applicants above the finding line will be invited to apply for the funds offered under Chapter 375, Subchapter B of the Board's rules. Applications will be funded on a first/first served basis until the funds offered under this Subchapter have been utilized. Under Board rules at the time of this writing, these loans will receive a 195 basis point subsidy. The remaining applicants above the funding line will be invited to submit applications for the remainder of available funds and will receive a 95 basis point subsidy.

A. Distribution of Funds to Categories

All eligible projects were rated and the funds required by all projects in each category were totaled. Each category's percentage of the total funds required for all categories was then computed. The portion of all funds available for FY 2006 was then assigned to each category based on the ratio of funds required by each category to the funds required by all categories; except that no category will receive less than 7% of the total funds available unless the total needs of a category are less than 7%.

After category percentages are assigned and available funds distributed among the categories, a funding line will be drawn within each category, not to exceed the funds available to each category. Projects above the funding line shall be eligible for assistance.

After the funding line is drawn, if funds are available pursuant to Subchapter B of Chapter 375 of the Board rules (relating to Provisions Pertaining to Use of capitalization Grant Funds), the Executive Administrator shall notify in writing all applicants above the funding line of the availability of such funds for the fiscal year and shall invite the submittal of applications. Such funds shall be distributed in accordance with the provisions of Subchapter B.

Note: Attachment A includes the text of §375.15 regarding the criteria and methods for distribution of funds under 31 TAC Chapter 375 Subchapter A, and the text of §375.213 regarding the distribution of funds under 31 TAC Chapter 375 Subchapter B.

B. Distribution of Funds to Disadvantaged Communities

Board rules establish the method for making loans to potentially eligible projects in disadvantaged communities identified on the FY 2006 CWSRF IUP. The executive administrator is directed to identify potential projects starting with Category A. If the amount of available funds (\$25 million) exceeds the total project costs for all projects in Category A, the executive administrator will identify projects in Category B, in priority order, that could be funded without exceeding the total funds available. If the amount of available funds exceeds total project costs for projects in Categories A and B, the executive administrator will identify projects in Category C, in priority order, that could be funded without exceeding the amount of

funds for loans. A funding line will be drawn at the point where available funds equal total project costs. Category G also exists for projects proposed by rural hardship communities. It was created in response to a federal appropriation to the states for the purpose of providing hardship grants to meet the wastewater needs of small, poor, rural communities with populations of less than 3,000. The U. S. Environmental Protection Agency (EPA) administered the grants, in conjunction with the CWSRF program. Texas received \$2,942,600 in FY 1997 and provided assistance to five poor rural communities. As of this date, the Board has not received any additional funds for the rural hardship community category; therefore staff does not plan to solicit applications from this category at this time.

The executive administrator will notify applicants of the availability of funding and invite them to apply for a loan. The executive administrator may also request the submission of any additional information necessary to determine if the applicant meets the criteria for being disadvantaged. Disadvantaged community applicants will be invited to apply for loans at the same time as federal Tier III applicants. Applicants will have three months from the date of the invitation to apply for a loan and three months from the date the application was received to obtain a commitment. If there are not enough applications to obligate the available funds, the executive administrator will re-rank the priority list by returning any incomplete applications and moving all projects with no or incomplete applications to the bottom of the priority list, in priority order, within the applicable category. (This applies only to disadvantaged community funding.) The funding line will be adjusted to ensure that available funding will equal total projects costs.

A second round of invitations will be made and these applicants will also have three months to apply for a loan and three months from the date the application was received to obtain a commitment. If there are not enough applications to obligate the available funds, the executive administrator will re-rank the priority list by returning any incomplete applications and moving all projects with no or incomplete applications to the bottom of the priority list, in priority order, within the applicable category. A funding line will be adjusted to ensure that available funding will equal total projects costs.

C. Notice of Availability of Funds

The Executive Administrator has determined that it is necessary to seek projects to be funded under the requirements of Chapter 375, Subchapter B of the Board's rules. Notice is hereby given of availability of \$50,000,000 at a lower interest rate in accordance with the provisions of the Subchapter. Because Subchapter B imposes requirements greater than those of Subchapter A, the Board generally provides lower interest rates for projects funded under Subchapter B. The Board will limit funding under Subchapter B only to that dollar amount of projects reasonably necessary to meet federal requirements. In addition, notice is hereby given of availability of \$25,000,000 at zero or one (1) percent interest rate in accordance with provision of Subchapter B which covers disadvantaged communities funding.

After approval of the Intended Use Plan by the Board, the Executive Administrator will also provide notice by direct mail to political subdivisions with projects listed above the funding line

in the annual Intended Use Plan. The notice shall invite applications for the lower interest rate funds and shall specify the date upon which such applications will be accepted and the approximate dollar amount of projects that the Board intends to fund through this chapter.

The Board will not provide funding under Subchapter B for refunding projects for which a loan has already been closed.

D. Funding Cycles

Applications from applicants receiving a notice under Subchapter B will be presented for Board action on a first-come, first-served basis unless a fund shortage exists. A fund shortage is considered to exist when on the first business day of the month of the Board meeting the cumulative amount of funds previously committed pursuant to subsection (a) of this section, plus the amount of funds required to fund all applications which are complete and ready for scheduling for Board action exceeds the amount of funds identified as available for such funding in the notice under subsection (a) of this section. Applications are considered to be complete and ready for Board action if they meet the requirements of §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Legal Information), and §375.34 of this title (relating to Required Fiscal Information) and either both §375.35 of this title (relating to Required Environmental Review and Determination) and §375.36 of this title (relating to Engineering Feasibility Data) of this title or §375.39 of this title (relating to Pre-Design Funding Option).

Applications which are ready for scheduling for Board action at the time a fund shortage occurs will be presented for Board action under this chapter in the order of their priority ranking in accordance with §375.16 of this title (relating to Rating Process).

Funds will not be made available to applicants under these provisions until available funds identified have been utilized. If funds are available under this subchapter for only part of an application, the remainder of the project may be funded under the CWSRF interest rate associated with loans under Subchapter A. Applications for projects for which no funds are available under this subchapter will be considered under Subchapter A, unless the applicant indicates it does not want to proceed under such chapter.

After the Executive Administrator determines that the funds made available pursuant to Subchapter B are sufficiently utilized to satisfy the federal requirements, the Executive Administrator shall notify in writing all remaining applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice of availability of funds or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance, and will be allowed two additional months to receive a loan commitment.

If, at any time during the above-described period an applicant above the funding line submits written notification that it does not intend to submit an application, or if additional funds become available for assistance, the funding line within each category may be moved downward

in priority order to accommodate additional projects which would utilize the funds that would otherwise not be committed. The Executive Administrator will notify such additional applicants in writing and will invite the submittal of applications. Applicants receiving such notice will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance and will be allowed two additional months to receive a commitment.

After the six-month period of availability of funds if all available funds are not committed, the Executive Administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the ranked list within each category, where they will be placed in priority ranking order. The funding line will be redrawn within each category to utilize the funds remaining within the category.

Each IUP is a stand-alone document and lists projects for a given fiscal year. Thus, those projects placed at the bottom of the IUP list could potentially cycle back to the top of the list. Projects that submit inadequate or no application may re-submit for the following year's IUP. These projects will be ranked according to Board rules without regard to the project's ranking the previous year. After the funding line is re-drawn, the Executive Administrator shall notify in writing all applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance and will be allowed two additional months to receive a commitment.

If funds are available from categories A through H after the Executive Administrator is able to make a determination that all applicants in each category have had the opportunity to be funded, the remaining funds will be made available to the other categories. The remaining funds will be pooled with any funds left over from the other categories and made available to Category A. If no applicants in Category A are able to utilize the funds, then the funds will be made available to Category B. If no applicants in Category B are able to utilize the funds, then the funds will be made available to Category C. If no applicants in Category C are able to utilize the funds then the funds will be made available to Category D. If no applicants in Category D are able to utilize the funds, then the funds will be made available to Category E. If no applicants in Category E are able to utilize the funds, then the funds will be made available to Category F.

E. Limits on Funding

Loan assistance will not exceed the cost estimate in the IUP without Board approval. In the event that the cost of a project exceeds the funds available, the applicant may seek additional funds from other appropriate Board programs. (See §375.15(1) of the Board rules.)

If there is a shortage of funds, no single applicant may receive more than 30 percent of the total funds available for the fiscal year.

V. INFORMATION ON ACTIVITIES TO BE SUPPORTED [606 (C)(3)]

A. Section 212 Projects

Table 1 is an alphabetic listing of all projects proposed for FY 2006. It includes a column showing the category of each project. Tables 2 A through 2 H list the projects in ranking order for each category, along with cost categories and discharge requirements.

B. Terms of Financial Assistance

The Texas Water Development Board will determine the terms of financial assistance on a project-by-project basis. The Board will establish the applicable interest rates for the Texas SRF. The fixed interest rates for loans under Chapter 375 subchapter A are set at rates 70 basis points below the fixed rate index rates for borrowers plus an additional reduction. (Please refer to §375.52 in Appendix A). The fixed interest rates for loans under Chapter 375 subchapter B are set at rates 170 basis points below the fixed rate index rates for borrowers plus an additional reduction. (Please refer to §375.222 in Appendix A). All SRF variable lending rates will equal the Board's borrowing rate plus 25 basis points. The fixed lending rate for borrowers is the market rates for the Delphis Hanover Corporation's Range of Yield Curve Scales minus 70 basis points. The Board will consider but will not be limited to the criteria set forth below:

1. The interest rate or rates required to retire State bonds.
2. The interest rate necessary to maintain the buying power of the Fund.
3. Separate lending rate scales may be established for special and unusual projects which may require special financing.

The Disadvantaged Community Program offers 1.0% loans for projects serving areas in which the adjusted median household income for the service areas is between 75% and 70% of the state adjusted median household income. Loans with a 0.0% interest rate are offered to service areas with an adjusted median household income that is less than or equal to 70% of the state adjusted median household income.

An estimated \$484,394,507 will be available to fund projects during FY 2006. Funding will be provided through:

- \$160,524,754 in loan repayments and interest earnings;
- \$9,949,920 in Match Bonds;
- \$264,170,233 in additional CWSRF bond issue(s);
- \$49,749,600 in ACH draws; and
- the sale of additional revenue bonds, if additional funds are required.

VI. ASSURANCES AND SPECIFIC PROPOSALS

Citations refer to sections Title VI of the Clean Water Act of 1987

A. 602(a) - Environmental Reviews

The TWDB will conduct environmental reviews as specified in TWDB Rules. None of the

projects listed in the FY 2006 IUP is expected to require an Environmental Impact Statement.

B. 602 (b)(2) - State Matching Funds

The TWDB agrees to deposit into the CWSRF from State monies an amount equal to 20% of the amount of each project disbursement on or before the date on which the State receives each Federal disbursement of funds for each project.

C. 602 (b)(3) - Binding Commitments

The TWDB will enter into binding commitments for 120% of each quarterly payment within one year of receipt of that payment.

D. 602 (b)(4) - Expeditious and Timely Expenditures

The TWDB will expend all funds in the CWSRF in a timely and expeditious manner.

E. 602 (b)(5) - First Use for Enforceable Requirements

The TWDB has previously met this requirement.

F. 602 (b)(6) - Compliance with Title II Requirements

The TWDB will meet the specific statutory requirements for publicly owned wastewater treatment projects constructed in whole or in part with funds directly made available by Federal capitalization grants for Title II equivalency and Federal Cross-Cutters.

G. 602 (b)(7) - State Laws and Procedures

The TWDB agrees to expend each quarterly grant payment in accordance with State laws and procedures.

H. 603 (f) - Consistency with Planning

The TWDB agrees that it will not provide assistance to any project unless that project is consistent with plans developed under Sections 205(j), 208, 303(e), 319 or 320 of the Water Quality Act of 1987.

I. Compliance with Cross-Cutter Requirements

It is a capitalization grant requirement that projects assisted with funds directly made available by capitalization grants comply with Cross-Cutting authorities. This requirement has been met for all capitalization grants through FY 2005. Projects funded under Chapter 375 Subchapter B will meet Cross-Cutter requirements for the FY 2006 grant.

VII. ADMINISTRATIVE COST OF THE CWSRF

The Act permits amounts from the Clean Water State Revolving Fund to be used for program administration, provided that such amounts do not exceed four percent of all capitalization grant awards. The total amount of funds available for administration from all grants through FY 2005 is \$50,807,340. Since the beginning of the program, CWSRF funds totaling \$23,504,344 have been expended for administrative costs, leaving a balance of \$27,302,996 available under the four percent cap.

Since November 1995 Board rules have provided for the assessment of loan origination fees as a means of replacing federal grant funds to pay the administrative costs of operating the Clean Water SRF loan program. A provision in the FY 2005 federal appropriation bill is as follows:

“That notwithstanding section 603(d)(7) of the Federal Water Pollution Control Act, as amended, the limitation on the amounts that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2005 and prior years where such amounts represent costs of administering the fund, to the extent that such amounts are or were deemed to be reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration.”

The Board continues to assess an administrative cost recovery fee on each loan. Amounts collected are deposited to the Administrative Cost Recovery Fund, which is separate from the Program Fund. These amounts provide for the reasonable costs of administering the Clean Water State Revolving Fund. Current law as of this writing provides that administrative fees collected on loans closed after FY 2002 will be subject to the 4% cap. Fees totaling \$5,745,195 held outside the cap are available as well as the remaining \$27,302,996 under the 4% cap. These amounts will support the administrative needs of the CWSRF for the near term.

Key to Tables

Total Points	The basic priority ranking score
% Cap	Per capita income is a secondary tie breaker
Population Category	Projects are grouped according to population:
Category A	3,000 or fewer
Category B	3,001 to 10,000
Category C	10,001 to 25,000
Category D	25,001 to 100,000
Category E	100,001 to 500,000
Category F	500,000 or greater
Category G	Non-Point Source Projects

Cost Categories

Costs for each facility are shown in the following categories:

I	Secondary Treatment and best Practicable Wastewater Technology
II	Advanced Treatment
IIIA	Infiltration/Inflow Correction
IIIB	Major Sewer Rehabilitation
IVA	New Collectors and Appurtenances
IVB	New Interceptors and Appurtenances
V	Correction of Combined sewers

TABLE 1
Alphabetical Listing of All CWSRF projects
FY 2006

TABLE 1
Alphabetical listing of all CWSRF projects
FY 2006

FY 2006 Intended Use Plan						
Clean Water State Revolving Fund						
Table 1 - Alphabetic Listing of All Eligible Projects						
SRF #	Entity	Disadvantaged	Loan Amount	Total Points	Population Category	Description
2019-01	Alpine		\$1,680,000	0.0	B	Collection System Rehabilitation and Overflow Control
2073-01	Avery	x	\$810,000	0.0	A	Facilities Rehabilitation.
2160-01	Bonham	x	\$2,000,000	0.0	B	Collection System Rehabilitation and Overflow Control
2165-02	Bowie	x	\$383,000	2.0	B	Sludge Treatment Capacity Expansion
2232-02	Campbell		\$495,000	1.1	A	First time service; new collection lines and lift station
2235-01	Caney Creek MUD		\$1,900,000	6.5	A	First time service; new collection lines and lift station
2277-01	Clarksville City		\$1,400,000	1.0	A	Trunk Sewer, Diversion
2317-01	Cooper	x	\$2,840,000	3.0	A	Collection System Rehabilitation and Overflow Control
3985-01	Cottonwood Shores		\$2,270,000	3.0	A	Trunk Sewer, Diversion
2380-03	Dayton		\$13,405,000	2.0	B	Expansion of existing treatment facility
2412-02	Donna	x	\$15,705,000	7.1	C	First time service; new collection system lines
2434-01	East Tawakoni		\$4,290,000	2.1	A	Wastewater Treatment Plant Expansion
2485-01	Farmersville		\$1,490,000	3.0	B	Collection System Rehabilitation and Overflow Control
2497-01	Floydada		\$610,000	1.5	B	New lift station and force main outflow line
2499-01	Follett		\$150,000	3.0	A	Reuse project; construction of an extra lagoon
2546-01	Galena Park		\$10,900,000	2.0	C	Wastewater Treatment Expansion
2593-01	Granbury		\$61,445,000	1.1	B	First time service; new collection lines and WWT facility
2617-03	Groves		\$5,000,000	1.5	C	Collection System Rehabilitation and Overflow Control
2037-02	GTUA - Anna/Melissa		\$7,300,000	1.0	B	Construction of regional trunk sewer
3454-02	GTUA-Pottsboro		\$3,210,000	4.5	A	Wastewater Treatment Plant Expansion
2691-01	Harris County MUD #50		\$1,785,000	1.0	A	Wastewater Treatment Plant Rehabilitation
3969-01	Hidalgo Co. MUD #1	x	\$11,365,000	3.5	B	Wastewater Treatment Plant Expansion
2828-01	Hollywood Park		\$17,000,000	1.1	B	First time service; construction sanitary sewer collection system
2834-16	Houston		\$3,365,000	3.5	F	Wastewater Treatment Plant Expansion
2834-17	Houston		\$4,485,000	5.0	F	Wastewater Treatment Plant Expansion
2834-18	Houston		\$2,690,000	0.0	F	Wastewater Treatment Plant Rehabilitation
2834-20	Houston		\$3,365,000	1.0	F	Wastewater Treatment Plant Expansion
2834-21	Houston		\$65,545,000	0.0	F	Collection System Rehabilitation and Overflow Control
2834-22	Houston		\$11,205,000	0.0	F	Facilities Rehabilitation.
2834-23	Houston		\$5,605,000	0.0	F	Wastewater Treatment Plant Rehabilitation
4466-01	Jarrell	x	\$7,895,000	2.1	A	First time service for the City of Jarrell and surrounding area
3002-01	La Joya	x	\$6,721,000	6.0	B	Wastewater Treatment Plant Expansion
3003-03	La Marque		\$4,600,000	5.0	C	Collection System Rehabilitation and Overflow Control
4455-01	Liberty Hill		\$1,345,000	5.1	A	First time service; alternative technology
3077-02	Littlefield		\$3,435,000	2.1	A	Extension of sewer collection lines to unserved areas
3093-01	Los Fresnos	x	\$5,415,000	0.0	B	Collection System Rehabilitation and Overflow Control
4329-01	Lower Valley Water District		\$20,310,000	1.1	D	Extension of sewer collection lines to unserved areas
3144-04	Lumberton MUD		\$4,600,000	0.0	C	Facilities Rehabilitation.
3116-01	Lyford	x	\$9,455,000	0.0	A	Wastewater Treatment Plant Expansion
3269-03	New Caney MUD		\$6,975,000	2.0	C	Collection System Rehabilitation and Overflow Control
4348-01	Nueces RA	x	\$10,215,000	7.0	A	First time service for the City of Leaky and surrounding area
3358-02	Orange Co WCID #1		\$20,890,000	2.5	C	Trunk Sewer, Diversion
3369-04	Palestine		\$5,890,000	2.0	C	Collection System Rehabilitation and Overflow Control
3409-02	Pharr		\$13,835,000	5.0	D	Collection System Rehabilitation and Overflow Control
3430-01	Point Comfort		\$27,000,000	2.0	A	Collection System Rehabilitation and Overflow Control
3441-02	Port Lavaca		\$1,528,000	5.0	C	Collection System Rehabilitation and Overflow Control
3487-01	Refugio Co WCID#1	x	\$1,320,000	5.0	A	Collection System Rehabilitation and Overflow Control
4012-02	Reno		\$810,000	0.0	A	Sludge Treatment Capacity Expansion
3503-02	Richland Hills		\$3,060,000	2.0	B	Collection System Rehabilitation and Overflow Control
4459-01	Rio Grande City	x	\$23,095,000	6.1	C	First time service; connection to centralized collection system

**FY 2006 Intended Use Plan
Clean Water State Revolving Fund**

Table 1 - Alphabetic Listing of All Eligible Projects

SRF #	Entity	Disadvantaged	Loan Amount	Total Points	Population Category	Description
3536-01	Roscoe	x	\$1,480,000	5.0	A	Trunk Sewer, Diversion
3975-01	Roxton	x	\$2,540,000	0.0	A	Wastewater Treatment Plant Expansion
4190-06	SAWS		\$3,095,000	5.0	F	Collection System Rehabilitation and Overflow Control
4190-07	SAWS		\$7,305,000	0.0	F	Collection System Rehabilitation and Overflow Control
3671-01	Stratford		\$2,720,000	1.5	A	Wastewater Treatment Plant Expansion
3755-01	Trenton		\$1,820,000	3.0	A	Collection System Rehabilitation and Overflow Control
3756-01	Trinidad	x	\$750,000	2.0	A	Collection System Rehabilitation and Overflow Control
3905-01	Wolfe City	x	\$985,000	0.0	A	Collection System Rehabilitation and Overflow Control
3919-02	Yoakum	x	\$11,057,750	1.5	B	Collection System Rehabilitation and Overflow Control
			\$473,839,750			

Table 1 A - Non-Ranked Project(s)

2834-19	Houston		\$1,570,000		F	Wastewater Treatment Plant Rehabilitation
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TABLES 2A through 2F

Projects in Ranking Order by Population (2A – 2F)

FY 2006

TABLE 2A through 2E
Projects in Ranking Order by Population (2A - 2E)
FY 2006

FY 2006 Intended Use Plan

Clean Water State Revolving

Table 2 - Ranking by Category

Rank	SRF #	Entity	Disadvantaged	Loan Amount	Total Points	Population Category	Cost Categories						Discharge Requirements			
							I	II	III A	III B	IV A	IV B	CBOD	TSS	NH3	DO
1	4348-01	Nueces RA	x	\$10,215,000	7.0	A		x			x		20	20		2
2	2235-01	Caney Creek MUD		\$1,900,000	6.5	A					x		5	5		5
3	4455-01	Liberty Hill		\$1,345,000	5.1	A					x					
5	3536-01	Roscoe	x	\$1,480,000	5.0	A						x	100			
4	3487-01	Refugio Co WCID#1	x	\$1,320,000	5.0	A	x				x		20	20		2
6	3454-02	GTUA-Pottsboro		\$3,210,000	4.5	A		x					10	15	3	4
7	3755-01	Trenton		\$1,820,000	3.0	A				x			20	20		4
8	2499-01	Follett		\$150,000	3.0	A							30	90		4
9	3985-01	Cottonwood Shores		\$2,270,000	3.0	A	x									
10	2317-01	Cooper	x	\$2,840,000	3.0	A					x		10	15	3	
11	3077-02	Littlefield		\$3,435,000	2.1	A						x	100			
12	4466-01	Jarrell	x	\$7,895,000	2.1	A										
13	2434-01	East Tawakoni		\$4,290,000	2.1	A		x	x			x	10	15		4
14	3756-01	Trinidad	x	\$750,000	2.0	A	x				x		30	90		4
15	3430-01	Point Comfort		\$27,000,000	2.0	A	x				x		20	20		2
16	3671-01	Stratford		\$2,720,000	1.5	A	x						65			
17	2232-02	Campbell		\$495,000	1.1	A					x		20	20		2
18	2691-01	Harris County MUD #50		\$1,785,000	1.0	A		x	x				10	15		4
19	2277-01	Clarksville City		\$1,400,000	1.0	A		x					20	20		20
20	3905-01	Wolfe City	x	\$985,000	0.0	A		x	x	x			30	90		4
21	3975-01	Roxton	x	\$2,540,000	0.0	A		x					20	20		4
22	4012-02	Reno		\$810,000	0.0	A		x					10	15	3	4
23	3116-01	Lyford	x	\$9,455,000	0.0	A	x						30	90		4
24	2073-01	Avery	x	\$810,000	0.0	A	x				x	x	20	20		4
				\$90,920,000												
1	3002-01	La Joya	x	\$6,721,000	6.0	B		x			x					
2	3969-01	Hidalgo Co. MUD #1	x	\$11,365,000	3.5	B	x			x	x	x				
3	2485-01	Farmersville		\$1,490,000	3.0	B				x			10	15		4
4	2165-02	Bowie	x	\$383,000	2.0	B		x					10	15		4
5	2380-03	Dayton		\$13,405,000	2.0	B				x			10	15	3	4
6	3503-02	Richland Hills		\$3,060,000	2.0	B					x		7	15	2,4	
7	2497-01	Floydada		\$610,000	1.5	B	x				x		30			
8	3919-02	Yoakum	x	\$11,057,750	1.5	B					x		10	15	3	5
9	2593-01	Granbury		\$61,445,000	1.1	B		x				x	10	15	3	
10	2828-01	Hollywood Park		\$17,000,000	1.1	B						x				
11	2037-02	GTUA - Anna/Melissa		\$7,300,000	1.0	B							10	15	3	5
12	2019-01	Alpine		\$1,680,000	0.0	B			x				10	15		4
13	2160-01	Bonham	x	\$2,000,000	0.0	B					x		10	15	3	4
14	3093-01	Los Fresnos	x	\$5,415,000	0.0	B				x	x		10	15		4
				\$142,931,750												
1	2412-02	Donna	x	\$15,705,000	7.1	C	x			x	x	x	20	20		2
2	4459-01	Rio Grande City	x	\$23,095,000	6.1	C	x				x	x	20	20		4
3	3003-03	La Marque		\$4,600,000	5.0	C				x			20	20		5
4	3441-02	Port Lavaca		\$1,528,000	5.0	C				x			20	20		2
5	3358-02	Orange Co WCID #1		\$20,890,000	2.5	C		x	x			x	10	15	3	4
6	2546-01	Galena Park		\$10,900,000	2.0	C		x								
7	3269-03	New Caney MUD		\$6,975,000	2.0	C					x		10	15	3	4
8	3369-04	Palestine		\$5,890,000	2.0	C				x	x		10	15	3	5
9	2617-03	Groves		\$5,000,000	1.5	C				x			10	15	3	4
10	3144-04	Lumberton MUD		\$4,600,000	0.0	C		x					10	15	2,4	6
				\$99,183,000												

FY 2006 Intended Use Plan																					
Clean Water State Revolving																					
Table 2 - Ranking by Category														Cost Categories				Discharge Requirements			
Rank	SRF #	Entity	Disadvantaged	Loan Amount	Total Points	Population Category	I	II	IIIA	IIIB	IVA	IVB	CBOD	TSS	NH3	DO					
1	3409-02	Pharr		\$13,835,000	5.0	D		x		x			10	15	4	5					
2	4329-01	Lower Valley Water District		\$20,310,000	1.1	D					x		20	20	5	4					
				\$34,145,000																	
1	2834-17	Houston		\$4,485,000	5.0	F	x						10	15	3	6					
2	4190-06	SAWS		\$3,095,000	5.0	F				x			7	15	2	5					
3	2834-16	Houston		\$3,365,000	3.5	F		x					10	15	3,4	4					
4	2834-20	Houston		\$3,365,000	1.0	F		x					5	12	2	4					
5	2834-18	Houston		\$2,690,000	0.0	F		x					10	15		4					
6	2834-21	Houston		\$65,545,000	0.0	F				x											
7	2834-22	Houston		\$11,205,000	0.0	F					x										
8	2834-23	Houston		\$5,605,000	0.0	F		x					10	15	3	4					
9	4190-07	SAWS		\$7,305,000	0.0	F				x			5	12	2	6					
				\$106,660,000																	

ATTACHMENT A
Chapter 375 Rules

ATTACHMENT A
Chapter 378 Rules

CHAPTER 375
CLEAN WATER STATE REVOLVING FUND
Readopted December 11, 2002 pursuant to Government Code §2001.039
Amended Effective July 6, 2004

SUBCHAPTER A. GENERAL PROVISIONS

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- §375.1 Scope of Rules
- §375.2 Definition of Terms
- §375.3 Policy Declarations
- §375.4 Date of Applicability of Rules

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- §375.13 Activities Funded
- §375.14 Project Priority List
- §375.15 Criteria and Methods for Distribution of Funds
- §375.16 Rating Process
- §375.17 Intended Use Plan
- §375.18 Administrative Cost Recovery
- §375.19 Financial Assistance for Projects Benefiting Disadvantaged Communities
- §375.20 Criteria and Methods for Distribution of Funds for Disadvantaged Communities for Fiscal Year 2004 Intended Use Plan
- §375.21 Criteria and Methods for Distribution of Funds for Disadvantaged Communities Beginning with Fiscal Year 2005 Intended Use Plan

DIVISION 3. APPLICATIONS FOR ASSISTANCE

- §375.31 Preapplication Conferences
- §375.32 Required General Information
- §375.33 Required Legal Information
- §375.34 Required Fiscal Information
- §375.35 Required Environmental Review and Determination
- §375.36 Engineering Feasibility Data
- §375.37 Required Water Conservation Plan
- §375.38 Review of Applications by the Executive Administrator
- §375.39 Pre-Design Funding Option
- §375.40 Applicant Resolution and Financing Agreement
- §375.41 Rural Hardship Grants
- §375.42 Capital Improvements Plan Option

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- §375.53 Financial Guarantees for Political Subdivision Bonds and Required Reserves

DIVISION 5. ENGINEERING REQUIREMENTS

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DIVISION 6. PREREQUISITES TO RELEASE OF FUNDS

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- §375.82 Inspection During Construction
- §375.83 Alterations in Approved Contract Documents
- §375.84 Contractor Bankruptcy

- §375.85 Building Phase Submittals
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DIVISION 8. POST BUILDING PHASE

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- §375.102 Final Accounting
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- §375.201 Scope of Subchapter

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- §375.212 Capitalization Grant Requirements
- §375.213 Distribution of Funds
- §375.214 Required Environmental Review and Determination

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- §375.221 Pre-Design Funding Option
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SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS

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- §375.302 Definitions of Terms

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DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM

- §375.350 Purpose
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SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS
Texas Administrative Code Sections 375.1 - 375.4

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.1. Scope of Rules. This subchapter shall govern the board's program of financial assistance from the Clean Water State Revolving Fund (CWSRF).

Adopted effective February 11, 1999

§375.2. Definitions of Terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code, Chapter 15 and not defined here shall have the meanings provided by the chapter or subchapter as appropriate.

- (1) Act - The Federal Water Pollution Control Act, as amended, 33 USC 1251 et. seq.
- (2) Administrative cost recovery fund - An operating fund to finance the administration of the CWSRF program, to be held outside the state treasury and separate from the CWSRF program account.
- (3) Administrative costs - All reasonable and necessary costs of administering any aspect of the CWSRF program, including the cost of servicing debt obligations of recipients of CWSRF financial assistance.
- (4) Alternative technology - Proven wastewater management techniques which provide for the reclaiming and reuse of water, productively recycle wastewater constituents or recover energy. Specifically, alternative technology includes land application of effluent and sludge; aquifer recharge; aquaculture; direct reuse; horticulture; revegetation of disturbed land; containment ponds; sludge composting and drying prior to land application; self-sustaining incineration; methane recovery; individual and onsite systems; and small diameter pressure and vacuum sewers and small diameter gravity sewers carrying partially or fully treated wastewater.
- (5) Applicant - A political subdivision or subdivisions which file an application with the board for financial assistance or associated actions.
- (6) Application for assistance - All the information required for submittal in the following sections: §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Legal Information), §375.34 of this title (relating to Required Fiscal Information), §375.35 of this title (relating to Required Environmental Review and Determination), and §375.36 of this title (relating to Engineering Feasibility Data).
- (7) Authorized representative - The signatory agent of the applicant authorized and directed by the applicant's governing body to make application for assistance and to sign documents required to undertake and complete the project, on behalf of the applicant.
- (8) Board - The Texas Water Development Board.
- (9) Bonds - All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.
- (10) Building - The erection, acquisition, alteration, remodeling, improvement, extension, or implementation of projects.
- (11) Capitalization grant - Federal grant assistance awarded to the state for capitalization of the Clean Water State Revolving Fund.
- (12) Change order - The documents issued by the loan recipient, authorizing a change, alteration, or variance in previously approved engineering contract documents, including, but not limited to, additions or deletions of work to be performed pursuant to the contract or a change in costs for work performed pursuant to the contract.
- (13) Closing - The time at which the requirements for loan closing have been completed under §375.71 of this title (relating to Loan Closing) and an exchange of debt for release of funds to either the applicant, an escrow agent bank, or a trust agent has occurred.
- (14) Collector sewer - The common lateral sewers, within a publicly owned treatment system, which are primarily installed to receive wastewater directly from facilities which convey wastewater from individual systems, or from private property.
- (15) Commission - The Texas Commission on Environmental Quality.
- (16) Commitment - An action of the board evidenced by a resolution, approving a request for financial assistance pursuant to this chapter.
- (17) Construction - Any one or more of the following:
 - (A) preliminary planning to determine the feasibility of a project;
 - (B) engineering, architectural, environmental, legal, title, fiscal, or economic studies;
 - (C) the expense of any condemnation or other legal proceeding;

- (D) surveys, designs, plans, working drawings, specifications, procedures; and
 (E) the building of a project or the inspection or supervision of any of the foregoing items.
- (18) Construction fund - A dedicated source of funds, created and maintained by the applicant at an official depository, or a designated depository approved by the executive administrator, used solely for the purposes of construction of a project as approved by the board.
- (19) Contract documents - The engineering description of the project including engineering drawings, maps, technical specifications, design reports, instructions and other contract conditions and forms that are in sufficient detail to allow contractors to bid on the work.
- (20) Cost-effectiveness determination - A determination based on engineering, environmental, and financial analyses that a proposed project or component part will result in the minimum total monetary costs over time, but without overriding adverse social, economic, and environmental considerations and legal requirements.
- (21) CWSRF - The state water pollution control revolving fund created pursuant to the Texas Water Code, Subchapter J, Chapter 15, herein referred to as the Clean Water State Revolving Fund.
- (22) CWSRF program account - The program account is an account in the CWSRF created pursuant to a resolution of the board in issuing CWSRF bonds and is used, pursuant to such bond resolution(s), for the purpose of providing financial assistance to political subdivisions for construction of projects and, if needed, to pay rebate amounts to the federal government.
- (23) Debt - All bonds, notes, certificates, book-entry obligations, and other obligations authorized to be issued by any political subdivision.
- (24) Designated management agency, waste treatment management agency - A political subdivision of the state which is designated by the governor and approved by EPA to receive federal assistance pursuant to the Act, §208 and §303(e).
- (25) Effluent limitation - Any restriction established by the state or the EPA administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discarded from a point source into waters of the state.
- (26) Eligible applicant - A waste treatment management agency including any interstate agencies, or any city, commission, county, district, river authority, or other public body created by or pursuant to state law which has authority to dispose of sewage, industrial wastes, or other waste; or an authorized Indian tribal organization; or any political subdivision applying for financial assistance to build a nonpoint source pollution control project pursuant to the Act, §319; or any political subdivision applying for financial assistance for an estuary management project pursuant to the Act, §320.
- (27) Enforceable requirements of the Act - Those conditions and limitations of permits issued pursuant to the Act, §402 and §404, which, if violated, could result in issuance of a compliance order or initiation of a civil or criminal action under the Act, §309. Where a permit has not been issued, but issuance is anticipated, the term means any requirement which will be in the permit when issued. Where no permit is applicable, the term means any requirement which is necessary to meet applicable criteria for best practicable waste treatment technology.
- (28) Engineering feasibility data - Those necessary plans and studies which directly relate to projects needed to comply with enforceable requirements of the Act and state statutes, and which consist of a systematic evaluation of alternatives that are feasible in light of the unique demographic, topographic, hydrologic, and institutional characteristics of the area and will demonstrate the selected alternative is cost-effective.
- (29) Environmental assessment - A written analysis prepared by the applicant describing the potential environmental impacts of a proposed project, sufficient in scope to enable the executive administrator to make an environmental determination.
- (30) Environmental determination - A finding by the executive administrator regarding the potential environmental impacts of a proposed project and describing what mitigative measures, if any, the applicant will be required to implement as a condition of financial assistance.
- (31) Environmental information document - A written analysis prepared by the applicant describing the potential environmental impacts of a proposed project, sufficient in scope to enable the executive administrator to prepare an environmental assessment to allow an environmental determination to be made by the executive administrator.
- (32) Environmental review - The process whereby an evaluation is undertaken by the board, consistent with the National Environmental Policy Act and other federal, state, and local laws and requirements, to determine whether a proposed project may have significant impacts on the environment and therefore require the preparation of an environmental impact statement, as detailed in §375.35 of this title (relating to Required Environmental Review and Determination).
- (33) EPA - The United States Environmental Protection Agency.
- (34) Escrow - The transfer of funds to a custodian of the funds which will act as the escrow agent or trust agent.
- (35) Escrow agent - The third party appointed to hold the funds which are not eligible for release to the loan recipient.
- (36) Escrow agent bank - The financial institution which has been appointed to hold the funds which are not eligible for release to the loan recipient.
- (37) Estuary management plan - A plan for the conservation and management of an estuary of national significance as described in the Act, §320.

- (38) Estuary management project - A project to develop or implement an estuary management plan.
- (39) Executive administrator - The executive administrator of the board or a designated representative.
- (40) Financial assistance - Loans by the board from the CWSRF, which may be made in conjunction with grants from the Hardship Grants Program for Rural Communities.
- (41) Fund - The state water pollution control revolving fund, created pursuant to the Texas Water Code, Subchapter J, Chapter 15, herein referred to as the CWSRF.
- (42) Funding year - The particular federal fiscal year (October 1 - September 30) for which funds are made available to the CWSRF.
- (43) Hardship Grants Program for Rural Communities - The program established by the federal Omnibus Consolidated Reversions and Appropriations Act of 1996 (Public Law 104-403).
- (44) Infiltration - Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.
- (45) Inflow - Water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.
- (46) Innovative technology - Nonconventional methods of treatment such as rock reed, root zone, ponding, irrigation or other technologies which represent a significant advance in the state of the art.
- (47) Intended use plan - A plan identifying the intended uses of the amount of funds available for loans in the CWSRF for each fiscal year as described in the Act, §606(c).
- (48) Interceptor sewer - A sewer which is designed for one or more of the following purposes:
- (A) to intercept wastewater from a final point in a collector sewer and convey such wastes directly to a treatment facility or another interceptor;
 - (B) to replace an existing wastewater treatment facility and transport the wastes to an adjoining collector sewer or interceptor sewer for conveyance to a treatment plant;
 - (C) to transport wastewater from one or more municipal collector sewers to another municipality or to a regional facility for treatment; and
 - (D) to intercept an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.
- (49) Lending rate - Interest rate assessed to loan applicants for loans through the CWSRF.
- (50) Market interest rate - The average interest rate given in current market dealings for this section of the country/state as determined by the board.
- (51) Nonpoint source pollution plan - A plan for managing nonpoint source pollution as described in the Act, §319.
- (52) Nonpoint source pollution project - A project pursuant to a nonpoint source pollution plan.
- (53) Permit or waste discharge permit - The authority granted by the commission to establish the conditions under which waste may be discharged into or adjacent to waters in the state.
- (54) Planning area - The existing and proposed wastewater service area consistent with the appropriate water quality management plan.
- (55) Point source - Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.
- (56) Population - For purposes of §375.15 of this title (relating to Criteria and Methods for Distribution of Funds) and §375.16 of this title (relating to Rating Process), population will be based upon data that is acceptable to the executive administrator and is determined as follows:
- (A) where the applicant is an incorporated city or town, the best available estimate of the current number of people which reside within the territorial boundaries of the applicant, or where greater, the number of people which receive wholesale or retail wastewater service from the applicant; or
 - (B) where the applicant is not an incorporated city or town, the best available estimate of the current number of people in the wastewater treatment service area to which the proposed project provides service.
- (57) Pre-design commitment - A commitment by the board prior to completion of planning or design pursuant to §375.39 of this title (relating to Pre-Design Funding Option).
- (58) Principal project - A project or group of projects included in a proposal which are intended to address a specific system condition within a single wastewater treatment service area that can be rated according to §375.16 of this title (relating to

Rating Process), the cost of correction of which represents greater than 50% of the cost of all projects included in the proposal.

- (59) Priority list - A list of projects for which CWSRF assistance may be requested.
- (60) Project - The scope of work describing a construction endeavor normally within a single wastewater treatment or collection service area which can be separately rated in accordance with §375.16 of this title (relating to Rating Process), or a nonpoint source project or estuary management project.
- (61) Project completion - The date that operations of the treatment works are initiated or are capable of being initiated, as determined by the executive administrator.
- (62) Project engineer - The engineer or engineering firm retained by the applicant to provide professional engineering services during the planning, design, and/or construction of a project.
- (63) Regional facility - Wastewater collection and treatment, which incorporates multiple service areas into an area wide service facility, thereby reducing the number of required facilities, or any system which serves an area that is other than a single county, city, special district, or other political subdivision of the state, the specified size of which is determined by any one or combination of population, number of governmental entities served, and/or service capacity. Regional wastewater treatment facilities may also include those identified in the approved state water quality management plan and the annual updates to that plan.
- (64) Release - The time at which funds are made available to the loan recipient.
- (65) Rural hardship community - A community consisting of not more than 3,000 residents that is not a remote area within the corporate boundaries of a larger city and that:
 - (A) is lacking centralized wastewater treatment or collection systems or is in need of improvements to onsite wastewater treatment systems;
 - (B) has an average annual per capita income equal to or less than 80% of the national annual per capita income as determined by the latest decennial census; and
 - (C) has an unemployment rate that exceeds by at least one percentage point the most recently reported average yearly national unemployment rate.
- (66) State of Texas 303(d) List - The list prepared biennially by the commission as required by the Act, §303(d).
- (67) Treatment works - Any devices and systems which are used in the storage, treatment, recycling, and reclamation of waste or which are necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of, or used in connection with, the treatment process (including land used for the storage of treated water in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from such treatment; or facilities to provide for the collection, control, and disposal of waste.
- (68) Trust agent - The party appointed by the applicant and approved by the executive administrator of the board to hold the funds which are not eligible for release to the loan recipient.
- (69) Unserved areas - For purposes of the rating process, refers to populated areas of an existing developed community that are not served by a centralized collection system.
- (70) Water conservation plan - A report outlining the methods and means by which water conservation may be achieved within a particular facilities planning area, as further defined in §375.37 of this title (relating to Required Water Conservation Plan).
- (71) Water conservation program - A comprehensive description and schedule of the methods and means to implement and enforce a water conservation plan.
- (72) Water quality management plan - A plan prepared and updated annually by the state and approved by the Environmental Protection Agency which determines the nature, extent, and causes of water quality problems in various areas of the state and identifies cost-effective and locally acceptable facility and nonpoint measures to meet and maintain water quality standards.

Adopted effective February 11, 1999

Amended effective January 1, 2003

§375.3. Policy Declarations.

- (a) General. The CWSRF is intended to be a perpetual fund to provide low interest loan assistance for the construction of waste treatment works, for implementing a management program for nonpoint source pollution under the Act, §319, and for developing and implementing a conservation and management plan under the National Estuary Program under the Act, §320.
- (b) Regionalization. In accordance with the provisions of House Bill 2, 69th Legislature, 1985, the board will encourage local political subdivisions of the state to implement regional wastewater treatment facilities consistent with the Texas water plan and the water quality management plan.

- (c) Water conservation. It is the policy of the board to promote the conservation of water in the state by requiring implementation of those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water, or increase the recycling and reuse of water so that a water supply is made available for future or alternative uses.
 - (d) Environmental protection. It is the policy of the board to preserve, protect, restore and enhance the waters of the state and to prevent, reduce and eliminate water pollution throughout the state. It is further the policy of the board to support the political subdivisions of the state and to provide financial aid with low interest loans for the prevention, reduction and elimination of water pollution.
 - (e) Management of financial resources. It is the policy of the board to structure financial assistance to applicants, including providing state matching funds in excess of that required by the Act when necessary and feasible, such that the board may maximize financial resources available to the state. It is further the policy of the board to satisfy the requirements of the Act and the requirements associated with any grants of federal funds.
 - (f) Projects expedited. It is the policy of the board to take measures as appropriate and necessary to expedite projects undertaken with the CWSRF. This may include, but would not be limited to, streamlining procedures for compliance with applicable federal requirements. The board will strive to ensure that CWSRF funding is efficiently and appropriately applied so that it meets the intent of federal requirements while attending to state goals for water quality management and the needs of the political subdivisions that the program is meant to serve.
 - (g) Force account. It is the policy of this board that all significant elements of the project be constructed with skilled laborers and mechanics obtained through the competitive bidding process. The board will not approve the use of force account in the major construction of the project, but may approve the use of force account for inspection and/or minor construction when the applicant demonstrates that it possesses the necessary competence required to accomplish such work and that the work can be accomplished more economically by the use of the force account method, or emergency circumstances dictate its use.
- Adopted effective February 11, 1999

§375.4. Date of Applicability of Rules.

- (a) This chapter shall apply to all applications for assistance for projects included in the intended use plan for fiscal year 2000 and all subsequent years. Applications for assistance for projects included in the intended use plan for fiscal year 1999 and prior years are governed by this chapter before repeal and Chapter 363, Subchapters A and B of this title (relating to General Provisions and State Water Pollution Control Revolving Fund).
 - (b) This chapter shall apply to all loans effective from the date of commitment.
- Adopted effective February 11, 1999

DIVISION 2. PROGRAM REQUIREMENTS
Texas Administrative Code Sections 375.11 - 375.21

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and 15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.11. Public Hearings. The board shall hold public hearings to consider adoption of the priority list and amendments thereto and shall allow a period for public review and comment before adoption and approval of the annual intended use plan.

Adopted effective February 11, 1999

§375.12. Types of Assistance.

- (a) Use of fund. The fund may be used for the following purposes:
 - (1) to make loans on the condition that:
 - (A) such loans are made at or below market interest rates, including interest free loans at terms not to exceed 20 years;
 - (B) annual principal and interest payments will commence not later than one year after completion on any project and all loans will be fully amortized not later than 20 years after project completion; and
 - (C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;
 - (2) to buy or refinance the bonds of eligible applicants within the state at or below market rates, when such debt obligations were incurred after March 7, 1985;
 - (3) for the reasonable costs of administering the fund and conducting activities under the Act, Title VI;
 - (4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of sale of such bonds will be deposited in the fund;

- (5) to earn interest on fund accounts; and
- (6) to guarantee or purchase insurance for local debt obligations.
- (b) Refinancing of debt. Applications for which refinancing is sought must include provisions for purchase of insurance for the local debt obligation.

Adopted effective February 11, 1999

Amended effective February 10, 2000

§375.13. Activities Funded. The board may provide financial assistance under this chapter for one or more elements of construction, as defined pursuant to §375.2 of this title (relating to Definitions of Terms).

Adopted effective February 11, 1999

§375.14. Project Priority List. The project priority list will be the same as the list of projects in the annual intended use plan prepared pursuant to §375.17 of this title (relating to Intended Use Plan).

Adopted effective February 11, 1999

§375.15. Criteria and Methods for Distribution of Funds.

- (a) After the executive administrator determines the amount of funds available for projects for a fiscal year, the funds will be applied to the list of projects designated to receive funding in the intended use plan. The list will be divided into eight categories as follows:
 - (1) category A, which shall consist of treatment works projects proposed by applicants with existing populations of 3,000 or fewer;
 - (2) category B, which shall consist of treatment works projects proposed by applicants with existing populations from 3,001 to 10,000;
 - (3) category C, which shall consist of treatment works projects proposed by applicants with existing populations from 10,001 to 25,000;
 - (4) category D, which shall consist of treatment works projects proposed by applicants with existing populations from 25,001 to 100,000;
 - (5) category E, which shall consist of treatment works projects proposed by applicants with existing populations from 100,001 to 500,000;
 - (6) category F, which shall consist of treatment works projects proposed by applicants with existing populations of 500,001 or greater;
 - (7) category G, which shall consist of treatment works projects proposed by applicants for rural hardship communities; and
 - (8) category H, which shall consist of nonpoint source projects or estuary management projects.
- (b) Projects for categories A-G shall be listed in priority ranking order with funds required and totaled by category. Projects in category H shall be listed in alphabetical order according to the name of the applicant with funds required and totaled for the category. Project costs will be based on cost estimates, acceptable to the executive administrator, contained in the intended use plan solicitation described in §375.17 of this title (relating to Intended Use Plan) used to establish the project list. Funds required by all projects in each category will then be totaled. Except for category G, a percentage of the total funds required by each category shall be computed based upon the ratio of funds required by each category to the funds required by all categories. The portion of the available funds shall be assigned to the categories based on this computed percentage, provided that no category will be assigned less than 7.0% of the total funds available unless the total needs of the category are less than 7.0%. The funds assigned to category G shall be equal to the amount of federal grants available for the fiscal year plus an equal amount of CWSRF loan funds.
- (c) After population class percentages have been assigned and available funds distributed among the categories, a funding line shall be drawn within each category to indicate the amount of funds available to each category.
- (d) After the funding line is drawn, if funds are available pursuant to Subchapter B of this title (relating to Provisions Pertaining to Use of Capitalization Grant Funds), the executive administrator shall notify in writing all applicants above the funding line of the availability of such funds for the fiscal year and shall invite the submittal of applications. Such funds shall be distributed in accordance with the provisions of Subchapter B.
- (e) After the executive administrator determines that the funds made available pursuant to Subchapter B are sufficiently utilized to satisfy the federal requirements, the executive administrator shall notify in writing all remaining applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice of availability of funds or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance, and will be allowed two additional months to receive a loan commitment.

- (f) If, at any time during the above-described period an applicant above the funding line submits written notification that it does not intend to submit an application, or if additional funds become available for assistance, the funding line within each category may be moved downward in priority order to accommodate additional projects which would utilize the funds that would otherwise not be committed. The executive administrator will notify such additional applicants in writing and will invite the submittal of applications. Applicants receiving such notice will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, to submit applications for assistance and will be allowed two additional months to receive a commitment.
- (g) After the six-month period of availability of funds if all available funds are not committed, the executive administrator will return any incomplete applications and move all projects for which no applications or incomplete applications were submitted to the bottom of the ranked list within each category, where they will be placed in priority ranking order. The funding line will be redrawn within each category to utilize the funds remaining within the category.
- (h) After the funding line is re-drawn, the executive administrator shall notify in writing all applicants above the funding line of the availability of funds for the fiscal year and shall invite the submittal of applications. Applicants will be allowed four months from the date of the notice or until August 31 of the fiscal year, whichever is sooner, submit applications for assistance and will be allowed two additional months to receive a commitment.
- (i) If funds are available from categories A through H after the executive administrator is able to make a determination that all applicants in each category have had the opportunity to be funded, the remaining funds will be made available to the other categories. The remaining funds will be pooled with any funds left over from the other categories and made available to category A. If no applicants in category A are able to utilize the funds, then the funds will be made available to category B. If no applicants in category B are able to utilize the funds, then the funds will be made available to category C. If no applicants in category C are able to utilize the funds, then the funds will be made available to category D. If no applicants in category D are able to utilize the funds, then the funds will be made available to category E. If no applicants in category E are able to utilize the funds, then the funds will be made available to category F.
- (j) Loan assistance will not exceed the cost estimate in the intended use plan without board approval. In the event the cost of a project exceeds the funds available, the applicant may seek additional funds from other appropriate board programs.
- (k) Applications for assistance for category H, nonpoint source or estuary projects, will be funded as follows.
- (1) Applications in category H will be funded on a first-come, first-served basis until the available funds have been exhausted.
 - (2) If, on the first business day of any given month in which funds are available, the total amount of funds required to fund all applications which are complete and ready for scheduling for board action exceeds the amount of funds available, the applications will be considered in the order of the submittal date of the complete application.
 - (3) If, during any given month for which funds are available, the amount of funds required to fund a particular application are insufficient to completely fund the application, the applicant may seek additional funds from other appropriate board programs.
- (l) If, there is a shortage of funds, no single applicant may receive more than 30% of the total funds available for projects for a fiscal year.
- (m) It is the policy of the board to fund all projects listed in the intended use plan whenever possible. To implement this policy, the board may impose a cap on the maximum amount of funds available to any single applicant.
- (n) If no shortage of funds exists for a fiscal year the executive administrator will invite the submittal of applications from all applicants. After official invitation, applicants will be given until August 31 of that fiscal year to submit an application and an additional two months to receive a loan commitment.
- (o) Notwithstanding the provisions of subsections (e), (f), and (h) of this section, the executive administrator may request additional information regarding any portion of the application for assistance, after the application has been submitted, without affecting the priority rating status of the application.

Adopted effective February 11, 1999

Amended effective October 10, 2001

§375.16. Rating Process.

- (a) Policy. The rating process is designed to achieve optimum water quality management, consistent with public health and water quality goals, and to give consideration to the varying populations of the state's political subdivisions.
- (b) Rating of principal projects. Proposals for inclusion of projects in an intended use plan will be rated based upon the principal project. Additional projects may be included in a proposal and may receive funding, so long as their costs represent 50% or less of the total project costs. The factors used to rate applications and the number of points assigned to each factor shall be as follows.

- (1) Where the principal project is a wastewater treatment plant or collection system in which the facility's hydraulic capacity requires expansion or removal of extraneous flow, the project will receive priority points according to the following considerations. A project may receive points for only one of the considerations listed in this section at subparagraphs A-E of this paragraph, whichever results in the largest score.
 - (A) Where the wastewater treatment plant is at 90% or greater of its permitted capacity on an annual average flow basis as reported to the commission, or for plants which are permitted for less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 3 points, provided that the project directly or indirectly improves the capacity problem at the facility.
 - (B) Where the wastewater treatment plant is at 75% or greater but less than 90% of its permitted capacity on an annual average flow basis as reported to the commission, or for plants which are permitted for less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 2 points, provided that the project directly or indirectly improves the capacity problem at the facility.
 - (C) Where the wastewater treatment plant is at 65% or greater but less than 75% of its permitted capacity on an annual average flow basis as reported to the commission, or for plants less than one mgd, three consecutive months of the past 12 months as reported to the commission, the project will receive 1.5 points provided that the project directly or indirectly improves the capacity problem at the facility.
 - (D) Projects intended to remedy collection system overflows under a schedule imposed by a court order, EPA administrative order, or commission enforcement order will receive 3 points.
 - (E) Projects to expand an existing treatment facility, permitted for no discharge, where no self-reporting flow data is required to be reported to the commission will receive 1.5 points.
- (2) Where the principal project is under a schedule imposed by a court order, EPA administrative order, or commission enforcement order, the project will receive 1 point.
- (3) Where the principal project is required by permit to meet a higher level of treatment at a future date or where the principal project is a conversion to a no-discharge or partial reuse facility in order to avoid a higher level of treatment, the project will receive 1.5 points.
- (4) Where the principal project will provide service to an unserved area, the project will receive 1.1 points. In addition, where the applicant provides a finding from a public health official that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project, the project will receive an additional 3 points.
- (5) Where the principal project is to construct innovative or alternative wastewater management systems, the project will receive 3 points.
- (6) Where the principal project impacts stream segments designated as "high priority" or where a total maximum daily load (TMDL) analysis is underway or completed as identified in the current approved State of Texas 303(d) List and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 4 points.
- (7) Where the principal project impacts stream segments designated as "medium priority," as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 3 points.
- (8) Where the principal project impacts stream segments designated as "low priority," as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 2 points.
- (9) Where the principal project impacts stream segments designated as "threatened" as identified in the current approved State of Texas 303(d) List, and where the principal project will directly or indirectly mitigate the identified problem, the project will receive 1 point.
- (10) Where the principal project will result in removal from service of one or more existing wastewater treatment plants, thus reducing the number of plant outfalls; or where the principal project will result in delivery of flow to, or receipt of flow at a regional facility, rather than create or continue use of a separate wastewater treatment facility, the project will receive 1 point.
- (11) Where there is documentation that the principal project as proposed will implement a regional solution, 3 points will be awarded if the project recommended is proposed to implement one of the following:
 - (A) a regional facility plan for water resources funded in whole or in part by a grant from the board;
 - (B) a commission regionalization or consolidation plan; or
 - (C) other plans developed by state or regional entities pursuant to legislative authority.

- (c) Rating of refinancing. If refinancing is sought for a completed project, the project will be rated in accordance with subsection (b) of this section, based upon the conditions which existed prior to the initiation of construction of the project. A completed project can not be combined with a project for which construction has not been completed, but must be rated separately.
 - (d) Rating score. The rating score will be the sum of the points assigned to the application under all criteria which are applicable to the application.
 - (e) Ranking for refinancing. Completed projects which involve refinancing will be listed in the intended use plan in the appropriate category as a separate group and will be placed below the group of projects in that category for which construction has not been completed.
 - (f) Tie-breaker. In the event more than one project as listed in the intended use plan receives the same rating score, funding will first be made available for the project in which the sewage treatment plant is at the greatest percentage of its rated capacity as calculated in paragraph (1)(A) of this subsection for projects improving plant capacity. For any remaining ties funding will first be made available to the applicant with the lowest annual per capita income.
 - (g) Abandoned facilities. Where the existing treatment facilities will be abandoned and sewage diverted to a different location, the diversion line will be given the rating score of the treatment facilities to be abandoned.
- Adopted effective February 11, 1999 | Amended effective February 10, 2000

§375.17. Intended Use Plan.

- (a) Each fiscal year the board shall prepare an intended use plan to meet the requirements of the Act, §606(c), and to assist the board in its financial planning. The intended use plan will identify projects anticipated to receive assistance from that year's available funds. The list of projects by priority ranking included in the intended use plan may also serve as the project priority list required by the Act.
- (b) The process for listing projects in the intended use plan will be as follows.
 - (1) Each year the executive administrator will provide written notice and solicit project information from entities desiring to receive funding commitments during the next fiscal year on the basis of that year's intended use plan. The notice will include forms to be used to submit information needed to rate the principal project and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required project information will include:
 - (A) information needed to rate the project;
 - (B) a description of the proposed facilities;
 - (C) the status of any required permit application, including projected effluent limitations;
 - (D) the estimated total project cost;
 - (E) an estimated schedule for planning, design and construction of the proposed project;
 - (F) a statement as to whether the applicant is under enforcement by EPA or the commission;
 - (G) beginning with the intended use plan for fiscal year 2005 and all subsequent intended use plans, for those potential applicants with existing populations of 25,000 or fewer, information regarding the eligibility of the area to be served by the project as a disadvantaged community as defined in §375.19; and
 - (H) such other information as may be requested by the executive administrator.
 - (2) The required information must be submitted not later than the deadline specified in the written notice to be included in the draft intended use plan. Rating information submitted after the deadline will not be accepted. Incomplete rating information forms may prevent projects from being rated for inclusion in the intended use plan.
- (c) Subsequent to adoption of an intended use plan, the nature of a proposed project included in the intended use plan may change without requiring a re-ranking in the following circumstances:
 - (1) the applicant for a proposed project may change;
 - (2) an alternative may be proposed which addresses the specific system condition for which priority points were assigned; or,
 - (3) the total cost of a proposed project may decrease from the amount listed in the adopted intended use plan.
- (d) If any changes are proposed to the nature of the improvements of a proposed project which would result in a change to the rating score as determined by §375.16 of this title (relating to Rating Process), the project must be re-ranked in the intended use plan. In this case the availability of funds will determined based on the revised rating score.
- (e) After a period of public review and comment, the intended use plan will be presented for adoption to the board at a regularly scheduled meeting.

Adopted effective February 11, 1999

Amended effective January 6, 2004

§375.18. Administrative Cost Recovery.

- (a) General. The board will assess charges for the purpose of recovering administrative costs of all recipients of CWSRF financial assistance who receive commitments after the effective date of this section.
- (b) Payment method. Recipients of loan commitments made after the effective date of this section will utilize the payment method as provided in subsection (c) of this section.
- (c) Loan origination charge. A loan origination charge will be assessed of the CWSRF loan amount, excluding the amount of the origination charge. The loan origination charge is a one-time charge that is due at the time of loan closing. The loan origination charge may be financed as a part of the CWSRF loan.
- (d) Administrative cost recovery fund. Charges collected according to this section shall be deposited into the administrative cost recovery fund.
- (e) Use of funds. Monies deposited into the administrative cost recovery fund shall be used only for administration of the CWSRF Program, unless transferred pursuant to subsection (f) of this section.
- (f) Transfer of funds. Subject to subsection (e) of this section, the board may authorize transfer of funds from the administrative cost recovery fund into the CWSRF program account to be used for any purpose for which other funds in the CWSRF program account can be used.
- (g) Investment of funds. Monies in the administrative cost recovery fund shall be invested in authorized investments as provided by board order, resolution, or rule. In the event of early payoff of a loan, all remaining servicing charges calculated in this subsection must be paid in full at the time of the payoff.

Adopted effective February 11, 1999

§375.19. Financial assistance for projects benefiting disadvantaged communities.

- (a) Eligibility. The board may provide financial assistance in the form of low interest loans through CWSRF program account to a political subdivision:
 - (1) that is a disadvantaged community; or
 - (2) that will serve an area that:
 - (A) is located outside the current service area of the political subdivision; and
 - (B) meets the definition of a disadvantaged community;
- (b) Definition of disadvantaged community.
 - (1) A community is a disadvantaged community if it meets the definition of a disadvantaged community presently or if as a result of a proposed project, the community becomes a disadvantaged community.
 - (2) Disadvantaged community means an area in which the project will provide service that has an adjusted median household income which is no more than 75% of the median state household income for the most recent year for which statistics are available; and
 - (A) if the service area is not charged for sewer services, has a household cost factor for water rates that is greater than or equal to 1.0%; or
 - (B) if the service area is charged for water and sewer services, has a combined household cost factor for water and sewer rates that is greater than or equal to 2.0%.
 - (3) The household cost factor is calculated as the average yearly water bill divided by adjusted median household income.
 - (4) The combined household cost factor is calculated as the average yearly water bill plus the average yearly sewer bill divided by the adjusted median household income.
 - (5) The average yearly water bill is calculated as the average number of persons per occupied household multiplied by 2,325 gallons per person per month multiplied by the proposed monthly water rate multiplied by 12. The proposed monthly water rate shall include the cost of the proposed project. Any funds for the proposed project received from sources other than the CWSRF shall be deducted from the cost of the project.
 - (6) The average yearly sewer bill is calculated as the average number of persons per occupied household multiplied by 1,279 gallons per person per month multiplied by the monthly sewer rate multiplied by 12.
 - (7) The adjusted median household income is calculated as the annual median household income identified in the most recent U.S. Census from the closest applicable census tract multiplied by the current Texas Consumer Price Index divided by the most recent decennial Texas Consumer Price Index. The necessary information will be made available through the executive administrator to the applicant.
 - (8) If taxes, surcharges or other fees are used to subsidize the water and/or sewer system, the average annual amount per household may be included in calculating the household cost factor or the combined household cost factor.
- (c) Interest rates and subsidies. Notwithstanding the provisions of §375.52 of this title (relating to Lending Rates), the interest rates for a project eligible for the funds available to disadvantaged communities program will be determined by the provisions

of this subsection.

- (1) If the adjusted median household income for the service area is between 75% and 70% of the median state household income, the board's financial assistance shall be in the form of a loan with a 1.0% interest rate.
 - (2) If the adjusted median household income for the service area is less than or equal to 70%, the board's financial assistance shall be in the form of a loan with a 0.0% interest rate.
- (d) Additional project costs. If the actual cost of a project funded under this section exceeds the estimated cost of the project as listed on the intended use plan, the additional cost will be funded through the Financial Assistance Account of the Texas Water Development Fund and interest rates for the additional cost will be set according to the provisions of §363.33 of this title (relating to Interest Rates for Loans and Purchase of Board's interest in State Participation Projects).

Adopted effective January 6, 2004

§375.20. Criteria and Methods for Distribution of Funds for Disadvantaged Communities for fiscal year 2004 intended use plan.

- (a) For the fiscal year 2004 intended use plan or for an amendment thereto, the board will determine the amount of CWSRF program account funds to be made available for projects that will serve disadvantaged communities and will include this information in such intended use plan.
- (b) Notwithstanding §375.15(e), for projects identified on the 2004 intended use plan, or any amendment thereof, upon the determination of the amount of funds available for disadvantaged community projects from capitalization grant reserves, state match, or any other sources, the executive administrator shall:
 - (1) identify all the projects in Category A in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds that are available for disadvantaged communities for the year;
 - (2) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A, identify all the projects in Category B in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;
 - (3) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A and B, identify all the projects in Category C in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;
 - (4) provide in writing to all the political subdivisions associated with projects identified in subsection (1), (2), and (3):
 - (A) notification of the availability of disadvantaged community funds for the project;
 - (B) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (C) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (c) In order to receive funding, political subdivisions receiving notification from the executive administrator of the availability of disadvantaged community funds must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of the application after the three month period has expired without affecting the priority status of the application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (d) A political subdivision receiving notification of the availability of funds for disadvantaged communities which does not submit an application before the three month deadline will be moved, for the purpose of receiving funds available for disadvantage communities, to the bottom of the priority list of the category in which it is listed in priority order. If an applicant which has submitted an application in a timely manner has not received a loan commitment within three months of the date on which the application was received, the application will be returned to the applicant as incomplete and, for the purpose of receiving funds available for disadvantage communities, the project will be moved to the bottom of the priority list in the applicable category.
- (e) If after three months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and, for the purpose of receiving funds available for disadvantage communities, move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list in the applicable category, where they will be placed in priority order.

- (f) Following the re-ranking of the priority list in subsection (e) (referred to hereafter as the second ranking), the executive administrator shall identify the projects which, if eligible, can receive disadvantaged community funds in accordance to subsection (b) of this section and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities.
- (g) The executive administrator shall provide in writing to all the political subdivisions associated with projects identified as potentially eligible for disadvantaged community funds based on the second ranking:
 - (1) notification of the availability of disadvantaged community funds for the project;
 - (2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (h) In order to receive funding, political subdivisions which have been sent notification of the eligibility of funds from the second ranking must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (i) If, after three months of the second date of notification of availability of funds, there are insufficient applications to obligate the remaining funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.
- (j) If, at any time during either six month period of availability of funds, a political subdivision which has been sent notification of the availability of funds submits written notification that it does not intend to submit an application or if additional funds become available for assistance to disadvantaged communities, the executive administrator will identify those additional projects that may be eligible for disadvantaged community funds and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities, following the procedure in subsection (b). Upon identification of such additional projects, the executive administrator shall provide in writing to the political subdivisions associated with the projects:
 - (1) notification of the availability of disadvantaged community funds for the project;
 - (2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (k) Potential applicants receiving such notice will be given three months to submit an application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (l) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list for the purpose of receiving funds available for disadvantage communities in the applicable category and the application returned to the applicant. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

Adopted effective January 6, 2004

§375.21. Criteria and Methods for Distribution of Funds for Disadvantaged Communities beginning with fiscal year 2005 intended use plan.

- (a) Starting with the fiscal year 2005 intended use plan and for each fiscal year thereafter, the executive administrator will determine annually the amount of CWSRF program account funds to be made available for projects that will serve disadvantaged communities and will include this information in the intended use plan. Funds available may include funds made available for disadvantaged communities in prior years' intended use plans and disadvantaged communities' funds that have become de-obligated from prior obligations or commitments.
- (b) Notwithstanding §375.15(e), for projects identified on the 2005 intended use plan, or any amendment thereof, and subsequent annual intended use plans, after projects have been ranked according to §375.16, the executive administrator shall:
 - (1) identify the projects in Category A serving disadvantaged communities in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the total amount of funds available for disadvantaged communities for the year;
 - (2) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A identified as serving disadvantaged communities, identify the projects in Category B in priority order which, if eligible, can receive funds available for disadvantaged communities without exceeding the

- total amount of funds that are available for disadvantaged communities for the year;
- (3) if the total amount of funds available for disadvantaged communities exceeds the total estimated project costs for all projects in Category A and B identified as serving disadvantaged communities, identify the projects in Category C in priority order which, if eligible, can receive funds for disadvantaged communities without exceeding the total amount of funds that are available for disadvantaged communities for the year;
- (4) provide in writing to all the political subdivisions associated with projects identified in subsection (1), (2), and (3) herein:
- (A) notification of the availability of disadvantaged community funds for the project
 - (B) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (C) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (c) In order to receive funding, political subdivisions receiving notification from the executive administrator of the availability of disadvantaged community funds must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Upon receipt of an application for assistance, the executive administrator shall notify the applicant, in writing, that an application has been received. The executive administrator may request additional information regarding any portions of the application after the three month period has expired without affecting the priority status of the application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (d) A political subdivision receiving notification of the availability of funds for disadvantaged communities which does not submit an application before the three month deadline will be moved, for the purpose of receiving funds available for disadvantage communities, to the bottom of the priority list of the category in which it is listed in priority order. If an applicant which has submitted an application in a timely manner has not received a loan commitment within three months of the date on which the application was received, the application will be returned to the applicant as incomplete and, for the purpose of receiving funds available for disadvantage communities, the project will be moved to the bottom of the priority list in the applicable category.
- (e) If after three months from the date of invitation to submit applications, there are insufficient applications to obligate all of the funds made available for disadvantaged communities, the executive administrator will return any incomplete applications and, for the purpose of receiving funds available for disadvantage, move all projects for which no applications or incomplete applications were submitted to the bottom of the priority list communities in the applicable category, where they will be placed in priority order.
- (f) Following the re-ranking of the priority list in subsection (e) (referred to hereafter as the second ranking), the executive administrator shall identify the projects which, if eligible, can receive disadvantaged community funds in accordance to subsection (b) of this section and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities.
- (g) The executive administrator shall provide in writing to all the political subdivisions associated with projects identified as potentially eligible for disadvantaged community funds based on the second ranking:
- (1) notification of the availability of disadvantaged community funds for the project;
 - (2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (h) In order to receive funding, political subdivisions which have been sent notification of the eligibility of funds from the second ranking must submit applications for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds, within three months of the date of notification of the availability of funds. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (i) If, after three months of the second date of notification of availability of funds, there are insufficient applications to obligate the remaining funds made available for disadvantaged communities, the executive administrator will return any incomplete applications. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.
- (j) If, at any time during either six month period of availability of funds, a political subdivision which has been sent notification of the availability of funds submits written notification that it does not intend to submit an application or if additional funds become available for assistance to disadvantaged communities, the executive administrator will identify which additional projects that may be eligible for disadvantaged community funds and which previously have not received written notification of the availability of funds for projects that serve disadvantaged communities, following the procedure in subsection (b).

Upon identification of such additional projects, the executive administrator shall provide in writing to the political subdivisions associated with the projects:

- (1) notification of the availability of disadvantaged community funds for the project;
 - (2) an invitation to submit an application for assistance, as defined, together with such additional information deemed necessary and appropriate for the board to determine eligibility of the project for these funds; and
 - (3) the deadline pursuant to which an application may be submitted to receive a commitment for these funds.
- (k) Potential applicants receiving such notice will be given three months to submit an application. Applicants for funds available for disadvantaged communities must receive a commitment for financial assistance for the project from the board within three months after submittal of an application.
- (l) Should an applicant which has submitted an application in a timely manner be unable to receive a loan commitment within three months of the date on which the application was received, the applicant's project will be placed at the bottom of the priority list in the applicable category and the application returned to the applicant. Any funds remaining that exceed the amount needed to fund projects receiving a financial assistance commitment from the board will be made available for disadvantaged communities the next fiscal year.

Adopted effective January 6, 2004

DIVISION 3. APPLICATIONS FOR ASSISTANCE **Texas Administrative Code Sections 375.31 - 375.42**

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.31. Preapplication Conferences. An applicant requesting information on financial assistance will make an appointment with the staff of the board for a preapplication conference. At a minimum, the preapplication conference should be attended by a member of the governing body of the applicant, the consulting engineer, and the financial advisor. The primary purposes of the meeting are: to establish basic eligibility of the project and applicant for financial assistance; to acquaint the applicant with the general, legal, and fiscal requirements of an application for funding; and to assist the applicant in completing an application.

§375.32. Required General Information. An application shall be in the form and numbers prescribed by the executive administrator. The applicant shall provide the following information on all applications to the board for financial assistance:

- (1) names, titles, and addresses for the applicant;
- (2) names, titles, and addresses for the authorized official, correspondent, or representative for the applicant and each participating political subdivision;
- (3) names, titles, and addresses for the principal officers, including the managing official of the applicant and each participating political subdivision;
- (4) names, titles, and addresses for the project engineer;
- (5) names, titles, and addresses for the legal counsel for the applicant. In an application for financial assistance which envisions a contractual loan agreement or the purchase of the applicant's bonds by the board, the name and address of bond counsel is also required (if other than legal counsel) and the name and address of financial advisor or consultant;
- (6) the authority of law under which the applicant was created;
- (7) a brief description of the project including, but not limited to, the following:
 - (A) location;
 - (B) a comprehensive statement clearly demonstrating the project need and timing of need in sufficient detail to support and justify the project;
 - (C) the total estimated cost of the project; and
 - (D) source of the project's water supply;
- (8) source of funds and other information on the basis of which the board can determine whether the state will recover its investment;
- (9) evidence that an application has been filed to obtain appropriate permits or other authorization from the commission or any other state or federal agency; and
- (10) required general information regarding any existing water conservation program, including but not limited to the following:
 - (A) education and information programs;
 - (B) plumbing code standards for water conservation in new construction;
 - (C) retrofit programs to improve water use efficiency in existing buildings;
 - (D) conservation-oriented water rate structures;

- (E) universal metering and meter repair and replacement;
- (F) leak detection and repair;
- (G) drought contingency plans;
- (H) ordinances and emergency procedures;
- (I) water recycling and reuse; and
- (J) water conserving landscaping.

§375.33. Required Legal Information. In addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

- (1) a resolution from its governing body which shall:
 - (A) request financial assistance and identify the amount of requested assistance;
 - (B) designate the authorized representative to act on behalf of the governing body; and
 - (C) authorize the representative to execute the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board.
- (2) a notarized affidavit from the authorized representative stating that:
 - (A) for a political subdivision, the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, §551.001, et seq.);
 - (B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;
 - (C) the applicant has no litigation or other proceedings pending or threatened against the applicant that would materially adversely affect the financial condition of the applicant or the ability of the applicant to issue debt; and
 - (D) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board.
- (3) copies of any proposed or existing contracts for consultant financial advisory, engineering, and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;
- (4) a citation to the specific legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing the legal existence of the applicant as may be deemed necessary by the executive administrator;
- (5) if the applicant provides or will provide water supply or wastewater collection and/or treatment service to another entity, the applicant shall submit the actual or proposed agreements, contracts or other legally binding instruments which establish this service relationship;
- (6) a description of all real property interests (sites, easements, rights-of-way, or specific use permits) necessary for construction of the project including:
 - (A) a statement explaining the status and means of obtaining the property interests;
 - (B) certification that it has the necessary legal powers and authority to obtain the property interests; and
 - (C) a copy of any proposed or existing lease or other agreement transferring interests in any land acquired or to be acquired for the project;
- (7) if financing of the project will require contractual loan agreement or the sale of bonds to the board payable either wholly or in part from revenues of contracts with others, a copy of any actual or proposed contracts under which applicant's gross income is expected to accrue. Before a loan is closed, an applicant shall submit executed copies of such contracts to the executive administrator;
- (8) if bonds to be sold to the board are revenue bonds secured by a subordinate lien, a copy of the authorizing instrument of the governing body in the issuance of the prior lien bonds shall be furnished; and
- (9) if a bond election is required by law to authorize the issuance of bonds to finance the project, the executive administrator may require applicant to provide the election date and election results as to each proposition necessary for the issuance of the bonds to the board as part of the application.

§375.34. Required Fiscal Information. The applicant shall submit a statement of the total project costs including the engineer's most current estimate of construction costs itemized as to major facilities, land and right-of-way costs, and engineering fees, as well as estimates of all legal fees, fees of financial advisors and/or consultants, contingencies, and interest during construction.

- (1) The following information is to be furnished when the applicant proposes to enter into a contractual loan agreement or to sell bonds to finance the project, whether the purchasers are to be the board or others than the board:
 - (A) citation of statutory authority for issuance;

- (B) type of bonds (i.e., general obligation, revenue, or combination). If revenues are to be pledged, state the source and nature of such revenue;
 - (C) amount of the issue;
 - (D) full name of issue(s);
 - (E) approximate date of issue(s);
 - (F) proposed maturities; and
 - (G) details of option for prior payments.
- (2) The applicant shall submit the amount and source of any funds to be expended on the project.
- (3) If the applicant is authorized by law to levy and collect ad valorem taxes, give the following information:
- (A) If such right and power have been exercised, give the following information for each of the five preceding years:
 - (i) the assessed valuation of taxable property;
 - (ii) the ratio of assessed valuation to actual market value in a specified year;
 - (iii) the maximum tax rate permitted by law per \$100 of assessed valuation;
 - (iv) the aggregate rate of all taxes levied and aggregate amount in dollars of taxes collected;
 - (v) the total amount in dollars of taxes collected; and
 - (vi) the distribution of tax rate as between interest and sinking fund and other purposes.
 - (B) If applicant is newly created, or if it has never exercised its taxing power, give the following information:
 - (i) the assessed valuation of taxable property if valuations have been established, and if not, the estimated total amount of the assessed valuation taxable property. Indicate whether the figure represents actual valuation or an estimate; and
 - (ii) the maximum tax rate permitted by law per \$100 of assessed valuation.
- (4) The applicant shall give details of any limitation governing amount of bonded or general obligation debt which applicant may incur.
- (5) If applicant has bonds outstanding which are payable wholly or in part from ad valorem taxes, the following information shall be submitted:
- (A) a complete description of each such issue of bonds, including title, date, interest rate, maturities, amount outstanding and prepayment options;
 - (B) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements; and
 - (C) a direct and overlapping debt statement.
- (6) If the financing of the project will involve entering into a contractual loan agreement or sale of bonds or other securities payable wholly or in part from ad valorem taxes, the following information shall be submitted:
- (A) a schedule of proposed future maturities of principal and interest of proposed bonds plus total maturities of any outstanding bonds from paragraph (5)(B) of this subsection; and
 - (B) the rate of interest assumed in computing future interest maturities on proposed bonds.
- (7) If the project for which the CWSRF loan is desired is for the purpose of extending, enlarging or improving an existing system or facility, the following shall be submitted for each of the five preceding years to the extent available:
- (A) a comparative operating statement;
 - (B) a schedule of water and sewer rates or service charges; and
 - (C) the number of customers or patrons of the system.
- (8) The applicant shall provide a schedule of proposed rates required for financing the project under consideration.
- (9) If applicant has bonds outstanding which are payable either wholly or in part from net revenues of a system or facility in connection with which the current project is planned, the following information shall be submitted:
- (A) a complete description of each such issues of bonds, including title, date, interest rate, maturities, amount outstanding, and prepayment options; and
 - (B) a consolidated schedule of future requirements of principal and interest extended so as to reflect total annual requirements.
- (10) If financing of the project will require entering into a loan agreement or require the sale of bonds or other securities payable either wholly or in part from net revenues of one or more facilities or systems, the following information shall be submitted:
- (A) a schedule of proposed future bonds plus total maturities of any outstanding bonds referred to in subsection (9)(B) of this section; and
 - (B) the rate of interest assumed in computing future interest requirements on proposed bonds.
- (11) The applicant shall provide a statement as to whether or not there has been a default in the payment of items of matured principal or interest and if so, give details.

- (12) The applicant shall provide audited financial statements prepared by an independent auditor from the most recent two years; however, no audit is required if the applicant has no operation history.
- (13) Where the project envisions either contractual loan agreement or the sale of revenue bonds, a schedule of the project engineer's estimate of future income and expense, showing the estimated amount of net revenue to accrue in each year during the life of any bonds to be issued.

§375.35. Required Environmental Review and Determination.

- (a) Environmental assessments and impact statements.
 - (1) Relevance of impacts evidence. The board will consider environmental, social, and economic impacts evidence as relevant in any hearing or matter in which the board is directed by law to consider such evidence or to determine that any proposed action is or is not detrimental to the public interest or welfare.
 - (2) Filing of federal assessment or statement required. If an agency of the federal government prepares or requires an environmental assessment or an environmental impact statement to be prepared, then the applicant shall file with the executive administrator the assessment or the statement prepared or required by the federal government, and a copy of the federal agency's issued decision document or permit in lieu of an environmental assessment prepared in accordance with the guidelines set forth in subsection (b) of this section.
 - (3) Environmental assessment guidelines. If the federal government does not prepare or require an environmental assessment or an environmental impact statement, and the project is not excluded from formal environmental assessment in accordance with paragraph (4) of this subsection, then an environmental assessment shall be required of the applicant by the board and shall be prepared in accordance with the guidelines set forth in subsection (b) of this section.
 - (4) Exclusion from formal environmental assessment.
 - (A) Certain categories of projects have been shown over time not to entail significant impacts on the quality of the environment, and may be excluded from formal environmental assessment requirements. These are categories of projects which are directed toward minor rehabilitation, expansion or upgrade of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not substantially increase the volume or loading of pollutants. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites.
 - (B) Projects which can not be excluded from the formal environmental assessment process are those which entail:
 - (i) the construction of new collection lines;
 - (ii) a new discharge or relocation of an existing discharge;
 - (iii) a substantial increase in the volume or loading of pollutants;
 - (iv) providing capacity for a population 30% or greater than the existing population;
 - (v) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; or
 - (vi) the construction of facilities which are likely to cause significant public controversy.
 - (C) Applicants who feel that their projects should be excluded from the formal environmental assessment requirement should consult with the board's staff early in the planning process in order to get a decision regarding exclusion. If the executive administrator determines that a project should be excluded, he will provide a description of the project and notice of his tentative determination to state agencies having jurisdiction, including the Texas Antiquities Committee and Texas Parks and Wildlife Department, in order to provide those agencies an opportunity to comment on the proposed project. If a proposed project is excluded from the formal environmental assessment requirement the executive administrator will base his environmental determination upon the information provided in the CWSRF engineering feasibility data.
 - (5) Executive administrator determination. The executive administrator shall make an environmental determination based upon the environmental information filed by the applicant in accordance with the guidelines set forth in paragraph (4) of this subsection or subsection (b) of this section, as appropriate, and giving full consideration to the views and comments of other agencies and affected persons. The executive administrator will document his determination and present it, with any appropriate provisions, to the board except as provided in subsection (b)(4)(A) of this section.
 - (6) Environmental assessment or impact statement supplemented. Nothing in this subsection shall be construed to prohibit supplementing an environmental assessment or impact statement with additional evidence. Recognizing that a project may be altered after an environmental determination on the project has been made, the executive

administrator will provide, prior to approval, that the loan application, contract documents, and related documents will be examined for consistency with the environmental determination. If inconsistencies are found that may entail environmental impacts substantially different from those addressed during the environmental assessment supporting the earlier environmental determination on the project, the executive administrator will require that additional information be provided by the applicant, the environmental assessment process be repeated consistent with this section, and/or the project be modified to eliminate the potential for adverse impacts, as appropriate.

(b) Guidelines for the preparation and review of environmental assessments.

(1) Introduction. These guidelines are not intended to duplicate or replace effective guidelines of other agencies with which the applicant may be required to comply due to funding commitments or other statutory requirements for the planning, design, construction, or operation of a project. The board shall accept an environmental assessment or an environmental impact statement prepared under the guidelines of another agency as evidence that the potential environmental effects of a proposed project have been adequately assessed in lieu of an environmental assessment prepared in accordance with these guidelines, as long as the assessment or statement adequately describes the project for which the applicant is seeking financial assistance from the board. In most cases, an environmental assessment prepared in accordance with these guidelines will be sufficient to support board action on an application. However, for projects which are notably extensive in scope or entail potentially significant adverse environmental impacts, more detailed and intensive environmental studies may be required. The applicant should consult with the board staff early in the planning process in order to determine the scope of the environmental assessment required to support the application for financial assistance.

(2) The environmental assessment process. The environmental assessment process should provide for a complete, systematic and objective identification and evaluation of the potential environmental effects of a proposed project, and alternatives to it, such that appropriate design changes and/or mitigative measures may be prescribed and the environmental soundness of the project may be demonstrated. This process is documented by an environmental assessment, which is prepared by the applicant and serves as the basis of an environmental review by the board. An environmental assessment should be reasonably concise, yet sufficient in detail to fully address the scope of the project, its social, economic and environmental setting, and its potential beneficial and adverse impacts. The assessment should show that a thorough and interdisciplinary evaluation has been made, including the evaluation of feasible alternatives; that the concerns of interested agencies and the affected public have been considered; and, that the assessment has been relied upon in planning the proposed project. The environmental assessment and the CWSRF engineering feasibility data should be prepared concurrently (and at the discretion of the applicant may be bound together in a single report) and reflect a coordinated effort to select an environmentally sound project.

(A) A proposed project may have effects which are adverse and/or beneficial. They may be direct or primary, and short-term or long-term in duration, such as impacts commonly associated with project construction. Other impacts may be more indirect, or secondary, such as those commonly associated with development accommodated or encouraged by the project.

(i) Examples of significant adverse impacts are those which:

- (I) degrade water quality;
- (II) disturb or destroy historical or archeological sites;
- (III) destroy protected plant and animal species and/or eliminate critical habitat;
- (IV) disturb or destroy floodplains, wetlands, or other environmentally sensitive areas;
- (V) create or aggravate flood problems;
- (VI) deteriorate air quality;
- (VII) create or aggravate public health hazards;
- (VIII) disrupt natural or cultural scenic views; and
- (IX) contribute to a series of related projects that involve individually minor but collectively significant adverse impacts.

(ii) Examples of significant beneficial impacts are those which:

- (I) maintain or enhance of water quality;
- (II) protect or enhance springs, lakes, bays, estuaries, and associated wetlands;
- (III) encourage a rational balance between water demands and resource availability;
- (IV) foster sound economic growth and orderly community development;
- (V) eliminate public health hazards or other environmental quality problems;
- (VI) promote or enhance the conservation of water, soil, forest, and coastal resources; and
- (VII) encourage the efficient use and proper management of natural resources, or recovery and beneficial use of waste products.

- (B) Proper application of the environmental assessment process can help identify special structural and non-structural measures which may be taken during project design and/or construction to mitigate potentially significant adverse impacts or reduce them to acceptable levels. Examples of mitigative measures include:
- (i) special precautionary measures to provide for public safety during facilities construction and/or operation;
 - (ii) special measures and/or facilities to reduce potential air quality problems or noise nuisances during and after project construction;
 - (iii) special measures to control erosion during and after project construction;
 - (iv) selection of alternative project locations to avoid archeological or historical sites, critical habitats, floodplains, wetlands, or other environmentally or culturally sensitive areas;
 - (v) special measures to protect or re-establish native vegetation to provide habitat for endemic species;
 - (vi) special measures to lessen adverse economic impacts; and
 - (vii) special land use controls or other measures to be implemented to lessen potential adverse secondary impacts of development upon environmentally sensitive areas.
- (C) The following public participation requirements will apply.
- (i) Prior to submission of an environmental assessment, the applicant will be required to publish notice of the availability of the environmental assessment in a newspaper of general circulation in the community to be served by the project. The notice must specify the location(s) where the assessment will be available for review and an address where written comments by the public may be sent. A minimum of 30 days from the date of publication must be provided as the period within which the public may review the assessment and submit comments. The final environmental assessment should include copies of all written comments and explain how comments were addressed.
 - (ii) If the executive administrator determines that a project is controversial, the applicant will be required to conduct a public hearing to receive public comments regarding the project. Notice of the hearing shall be published by the applicant in a newspaper of general circulation in the community to be served by the project at least 30 days prior to the hearing. The notice shall provide a description of the project; specify the location, date, and time of the hearing; specify the location(s) where the assessment will be available for review prior to the hearing; and provide an address where written comments by the public may be sent. The final environmental assessment should include a transcript of the public hearing, copies of all written comments received and an explanation of how the comments were addressed. The executive administrator shall not make an environmental determination regarding a project until adequate documentation of the public participation process has been received by the board.
- (3) Specific guidelines for environmental assessments. The environmental assessment shall include, at a minimum:
- (A) a brief, complete explanation of the purpose and need for the proposed project;
 - (B) a complete, concise description of the proposed project and its costs;
 - (C) a description of the social and natural environment of the planning area which would be affected directly or indirectly by the proposed project, as the area exists prior to the project, including, but not limited to:
 - (i) geological elements (topography, geology, caves, faults, soils);
 - (ii) hydrological elements (surface water bodies, ground water resources, aquifer recharge zones);
 - (iii) floodplains and wetlands;
 - (iv) climatic elements (precipitation, prevailing winds, air quality);
 - (v) biological elements (major plant and animal communities, protected species, critical habitats, natural areas, parks, forests, wildlife refuges);
 - (vi) historical or archeological resources;
 - (vii) social and economic conditions (population, financial condition, community needs); and
 - (viii) other programs and projects (highway, water supply, and water quality projects, regional and local planning);
 - (D) a description of the alternatives considered during the development of the proposed project and an explanation of the evaluation of alternatives and how monetary and environmental factors were considered in the selection of the proposed project;
 - (E) a description and evaluation of potential impacts which may result from the proposed project upon the social, economic and environmental resources of the affected area of the project, and an explanation of how

- each potentially adverse impact can be avoided, reduced to an acceptable level, or mitigated by structural and non-structural measures;
- (F) an identification of beneficiaries and non-beneficiaries of the proposed project and an assessment of the public acceptability of the project, its costs, and its potential environmental impacts;
 - (G) a summary of comments obtained from and documentation of coordination with appropriate agencies (e.g., Texas Antiquities Committee, which considers potential impacts to historical and cultural resources; Texas Parks and Wildlife Department, which considers potential impacts to wetlands and threatened and endangered species; Texas Natural Resource Conservation Commission, which considers consistency with stream standards and water quality management planning) and the affected public, an explanation of the methods used to obtain this input, and a discussion of how specific concerns were considered in the evaluation of alternatives and the planning of the proposed project;
 - (H) a description of the potential adverse impacts which cannot be avoided should the project be implemented;
 - (I) a description of the future of the environment without the proposed project; and
 - (J) a description of the extent to which the project may involve tradeoffs between short term environmental losses and long term gains or vice versa.
- (4) Review by the board.
- (A) For projects using the pre-design funding option, board staff will use preliminary environmental data provided by the applicant, as specified in §375.39 of this title (relating to Pre-Design Funding Option) and make a written report to the executive administrator on known or potential significant social or environmental concerns. Subsequently, these projects must have a favorable executive administrator's environmental determination which is based upon a full environmental review during planning, as provided under subparagraph (B) of this paragraph.
 - (B) Draft versions of the environmental assessment and associated planning documents should be submitted to the board in time to allow for an initial interdisciplinary review. Any deficiencies or problems will be presented to the applicant, who will resolve any and all issues and prepare and submit the final environmental assessment for consideration as part of the loan application. In cases where an environmental assessment or environmental impact statement prepared in accordance with the guidelines of another agency has been submitted in place of an environmental assessment as defined in these guidelines, the board's staff will review it for completeness and applicability. In cases where a decision has been made to exclude a project from the formal environmental assessment process, the board's staff will base its review on the information provided §375.36 of this title (relating to Engineering Feasibility Data). Based upon this review, the board's staff will make written recommendations regarding the environmental impacts of the project, including any special concerns and proposed mitigative measures. The executive administrator will make a determination regarding the significance of the environmental impacts of the project based upon these guidelines and giving full consideration to the views and comments of other agencies and affected persons. The executive administrator will document his determination and present it, with any necessary provisions, to the board. If the executive administrator determines that the assessment is not adequate or that issues remain which warrant further consideration, the applicant will be requested to resolve the issues or modify the project as necessary.
 - (C) When, after an environmental determination on a project has been presented to the board, the project has been altered to the extent that the environmental assessment process has been repeated, the executive administrator will amend the determination and, if appropriate, present it, with any necessary provisions, to the board.

§375.36. Engineering Feasibility Data.

- (a) Submittal of engineering feasibility data. The applicant shall submit engineering feasibility data signed and sealed by a professional engineer registered in the State of Texas. The data, based on guidelines provided by the executive administrator, shall provide:
- (1) description and purpose of the project;
 - (2) entities to be served and current and future population;
 - (3) the cost of the project;
 - (4) a description of innovative, alternative, and conventional management techniques considered and reasons for the selection of the project proposed;
 - (5) sufficient information to evaluate the engineering feasibility; and

- (6) maps and drawings as necessary to locate and describe the project area. The executive administrator may request additional information or data as necessary to evaluate the project.
 - (b) Nonpoint source applications. Applications for assistance for nonpoint source pollution control projects must be consistent with an approved nonpoint source management plan pursuant to the Act, §319.
 - (c) Estuary management applications. Applications for assistance for estuary management projects must be consistent with an approved estuary management plan pursuant to the Act, §320.
 - (d) Approval of engineering feasibility data. The executive administrator will approve the engineering feasibility data after confirming that the items listed in subsection(a) of this section have been completed, the appropriate environmental determinations have been completed in accordance with §375.35 of this title (relating to Required Environmental Review and Determination) or §375.214 of this title (relating to Required Environmental Review and Determination), whichever is appropriate, and the loan recipient has agreed to incorporate all mitigating measures directed by the executive administrator.
 - (e) Changes to engineering feasibility data. If changes occur in the project after approval of the engineering feasibility data, the executive administrator may request additional engineering and/or environmental information in order to ascertain that the loan commitment and environmental determination continues to be appropriate.
- Adopted effective February 11, 1999
- Amended effective February 10, 2000

§375.37. Required Water Conservation Plan.

- (a) The applicant, if not eligible for an exemption, shall submit either with its application or separately under subsection (b) of this section two copies of a water conservation plan for approval. The executive administrator shall review all water conservation plans submitted as part of an application for financial assistance for a project, shall determine if the plans are adequate, and shall present information to the board on the water conservation plan when the application is considered by the board.
- (b) An applicant may elect to submit the required water conservation plan after the board approves its application for assistance, but before any funds are released. In such case, the applicant shall submit the conservation plan to the executive administrator for review. The executive administrator shall make a preliminary determination as to whether the plan is adequate, and shall submit the plan to the board for consideration. The board will approve, disapprove, or approve with modifications the applicant's water conservation plan during an open meeting. The board may revise the amount and conditions of its financial commitment after considering the water conservation plan.
- (c) The water conservation plan required under subsections (a) or (b) of this section shall include an evaluation of the applicant's water and wastewater system and shall set goals to be accomplished by water conservation measures. The plan shall include a long-term water conservation plan and an emergency water demand management plan. In addition to any elements deemed appropriate by the applicant, the long-term plan shall include the following:
 - (1) measures to determine and control unaccounted for water including universal metering of both customer and public uses, periodic meter testing and repair, and distribution system leak detection and repair;
 - (2) non-promotional retail water rate structures which do not promote the excessive use of water by retail customers; and
 - (3) a continuing program of education and information which provides water conservation information directly to each residential, industrial and commercial customer annually, includes at least one other type of annual educational water conservation activity, and provides water conservation literature to new customers when they apply for service.
- (d) The board may not require an applicant to provide a water conservation plan if the board determines an emergency exists, the amount of financial assistance to be provided is \$500,000 or less, or implementation of a water conservation program is not reasonably necessary to facilitate water conservation.
 - (1) An emergency exists when:
 - (A) a water system has failed, causing the health and safety of the citizens served to be endangered;
 - (B) sudden, unforeseen demands are placed on a water system (i.e., because of military operations or emergency population relocation);
 - (C) a disaster has been declared by the governor or president; or
 - (D) the Governor's Division of Emergency Management of the Texas Department of Public Safety has determined that an emergency exists.
 - (2) The board shall review an application for which an emergency is determined to exist six months after the board commits to financial assistance, and also at the time of any extensions of the loan commitment. If the board finds that the emergency no longer exists, it may then require submission of a water conservation plan satisfactory to the board, before making any further disbursements on the commitments.
 - (3) Submission of a plan is not necessary to facilitate water conservation if the applicant already has a program in effect that meets the requirements of this section.

- (e) If the applicant will utilize the project financed by the board to furnish water services to another entity that in turn will furnish the water services to the ultimate consumer, the requirements for the water conservation plan may be met either through contractual agreements between the applicant and the other entity providing for establishment of a water conservation plan, which shall be included in the contract at the earliest of the original execution, renewal or substantial amendment of that contract, or by other appropriate measures.
- (f) The long-term water conservation plan may also include other measures that the applicant deems appropriate. These may include, but are not limited to, measures such as:
 - (1) codes and ordinances which require the use of water-conserving technologies;
 - (2) measurement and control of excessive pressure in the distribution system;
 - (3) ordinances to promote efficiency and avoid waste;
 - (4) commercial and residential conservation audits for indoor and landscape water uses;
 - (5) plumbing fixture replacement and retrofit programs;
 - (6) recycling and reuse of reclaimed wastewater and/or gray water; and
 - (7) other measures as may be applicable.
- (g) The emergency demand management plan shall include trigger conditions, demand management measures, initiation and termination procedures, means of implementation, and measures to educate and inform the public.
- (h) The board will accept a water conservation plan determined by the commission to satisfy the requirements of 30 TAC Chapter 288 (relating to Water Conservation Plans, Guidelines, and Requirements).

§375.38. Review of Applications by the Executive Administrator.

- (a) Review criteria for loans. The executive administrator will review the applications and request any modifications or additional information as may be required for consistency with: §375.32 of this title (relating to Required General Information); §375.33 of this title (relating to Required Legal Information); §375.34 of this title (relating to Required Fiscal Information); §375.35 of this title (relating to Required Environmental Review and Determination); §375.36 of this title (relating to Engineering Feasibility Data); and §375.39 of this title (relating to Pre-Design Funding Option). If at any time the executive administrator determines that requested modifications or information is not being provided expeditiously by the applicant or that the applicant is not proceeding expeditiously to seek a loan commitment the executive administrator shall, after notice to the applicant, return the application. The application will have to be resubmitted to receive consideration for financial assistance.
- (b) Review criteria for refinancing. The executive administrator shall review an application for refinancing of construction costs and present it to the board only after confirming the following.
 - (1) All of the items in subsection (a) of this section have been confirmed.
 - (2) The contract documents have been approved in accordance with §375.62 of this title (relating to Approval of Contract Documents).
 - (3) The executed contract documents have been submitted and approved, if available.
 - (4) An inspection and, if necessary, appraisal of any completed work has been performed, the findings of which demonstrate that the project is consistent with the board's rules and all applicable laws.
 - (5) The engineering feasibility data and environmental review was completed in accordance with §375.36 of this title before initiation of construction.
 - (6) Any other information requested by the executive administrator has been provided.

§375.39. Pre-Design Funding Option.

- (a) This loan application option will provide an applicant that meets all applicable board requirements an alternative to secure a commitment and to close on the commitment for planning, design or building costs associated with a project. Under this option, a loan may be closed to complete planning and design activities. If planning requirements have not been satisfied, design and building funds will be held or escrowed and released in the sequence described in this section. After planning and environmental review, the board may require the applicant to make changes in order to receive the board's approval and proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity.
- (b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, contractual, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.
- (c) Applications for pre-design funding must include the following information:

- (1) for loans including building cost, an engineering plan of study which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected flows; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;
 - (2) contracts for engineering services;
 - (3) evidence that an approved water conservation plan as required under §375.37 of this title (relating to Required Water Conservation Plan) will be adopted prior to the release of loan funds;
 - (4) all information required in §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Legal Information), and §375.34 of this title (relating to Required Fiscal Information); and
 - (5) any additional information the executive administrator may request to complete evaluation of the application.
- (d) After board commitment and completion of all closing and release prerequisites as specified in §375.71 of this title (relating to Loan Closing) and §375.72 of this title (relating to Release of Funds), funds will be released in the following sequence:
- (1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan if still outstanding under §375.37 of this title;
 - (2) for design costs, after receipt of executed contracts for the design phase and upon approval of the engineering feasibility data as specified in §375.36 of this title (relating to Engineering Feasibility Data) and compliance with §375.35 of this title (relating to Required Environmental Review and Determination); and
 - (3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.
- (e) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (c)(1) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns to allow the executive administrator to make a recommendation to the board on pre-design funding. Subsequently, these projects must have a favorable executive administrator's recommendation which is based upon a full environmental review during planning, as provided by §375.35 of this title.
- Prior to the board's approval of release of funds for design, the executive administrator shall summarize the project's environmental review and shall inform the board of any environmentally related special mitigative or precautionary measures recommended for the project. The board may elect to affirm or alter the conditions of the original commitment to the applicant or withdraw the commitment to the applicant.

Adopted effective February 11, 1999

Amended effective February 10, 2000

§375.40. Applicant Resolution and Financing Agreement.

- (a) At the time the board initiates the process for sizing a bond sale, an applicant needing funds shall submit a resolution requesting inclusion in the board's future bond sale. In order to be included in a board bond sale, an applicant must submit a resolution outlining its intent to utilize board financing and the timing at which the loan will be closed.
- (b) An applicant requesting \$50 million or more in bond proceeds or requesting a board bond sale be scheduled specifically to address an applicant's financing needs, shall execute a financing agreement, the form of which will be provided by the development fund manager at least 10 days prior to the pricing date of the board's bonds. In the event the financing agreement is not executed prior to the pricing date, the applicant's request for funds at that time will not be included in that bond sale. A financing agreement will include performance obligations, closing language, maturities and interest rates. The financing agreement will also provide for cancellation by the applicant, associated payments to the board to compensate for costs and loan origination risk and conditions under which the development fund manager may extend or cancel the agreements.

§375.41. Rural Hardship Grants.

- (a) An applicant for a loan for a project to benefit a rural hardship community is eligible to receive a grant through the hardship grants program for rural communities for an amount not to exceed 50% of the costs associated with planning, design, and construction of treatment works and systems utilizing alternative technology.
- (b) To be eligible for assistance under this section, the board must determine that the project will improve public health or reduce an environmental risk. An applicant for funding under this section must provide, in addition to all other required application material, documentation that, in the opinion of the executive administrator, is sufficient to allow the board to make a determination under this subsection.
- (c) The executive administrator or his designated representative shall enter into agreements with applicants under this section for the purpose of setting forth the terms and conditions of the grants.
- (d) The grants awarded under this section shall be administered according to this subchapter except for the following:

- (1) grants are not subject to the administrative cost recovery provisions of §375.18 of this title (relating to Administrative Cost Recovery); and
- (2) grants are not subject to the book entry closing or DTC requirement provisions of §375.71 of this title (relating to Loan Closing).

§375.42. Capital Improvements Plan Option.

- (a) The capital improvements plan CWSRF loan processing option will provide applicants an alternative to secure loan proceeds for eligible projects that meet the criteria of §375.13 of this title (relating to Activities Funded) under the applicant's capital improvements plan. This option is a two-step loan processing method. First, an applicant will provide applicable information to the board for preliminary eligibility determination under subsection (b) of this section. Second, an applicant will submit a financial application in order to apply for financing under subsection (d) of this section. Under the capital improvements plan option, a loan may be closed: after bids are approved and prior to construction commencing as specified in §375.71 of this title (relating to Loan Closing) and §375.72 of this title (relating to Release of Funds); or utilizing the pre-design funding option as specified in §375.39 of this title (relating to Pre-Design Funding Option). This capital improvements plan option may be used for the purpose of reimbursement of system revenues and/or refinancing of interim financing, including commercial paper expended for approved project(s). General procedures and requirements for processing a loan application under the capital improvements plan option are described in subsections (b), (c) and (d) of this section.
- (b) An applicant will request a preliminary eligibility determination from the board on the project(s) described in the applicant's capital improvements plan or similar document addressing capital improvement planning.
 - (1) The board's action of preliminary eligibility determination will:
 - (A) authorize board staff to expend agency resources to review and approve project documents as described in subsection (c) of this section for the proposed capital improvements plan;
 - (B) establish that those portions of project(s) and costs approved in the preliminary eligibility determination are eligible for CWSRF financing provided that the requirements in subsection (c) of this section are met; and
 - (C) acknowledge the applicant's intention to construct the project(s) in the capital improvements plan and to seek financial assistance to finance, including refinancing all or part of, those project(s).
 - (2) The board's action of preliminary eligibility determination will provide no financial commitment by the board to the project(s) in the capital improvements plan.
 - (3) Requests for preliminary eligibility determination must include:
 - (A) a capital improvements plan or similar information which includes a description and purpose of the project(s), area maps or drawings which adequately locate the project area(s), a proposed project schedule, estimated project costs and sources of funds;
 - (B) a forecast of system cash flow, timing and approximate amount of financial assistance to be requested from the CWSRF, and a description of any intention to use the CWSRF loan proceeds to refinance existing interim debt obligations, including a description of the debt obligations, interfund transfers or internal methods of finance;
 - (C) a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project and any environmental information which may already be prepared pertaining to the proposed project(s) included in the capital improvement plan or documentation of environmental review of the proposed project(s) which may have been required by another state or federal agency;
 - (D) a resolution of the applicant's governing body requesting CWSRF preliminary eligibility determination from the board and stating that the applicant will comply with all board rules and requirements; and
 - (E) any additional information the executive administrator may request to complete eligibility evaluation of the capital improvements plan.
- (c) Procedures between board preliminary eligibility determination and before financial commitment are as follows:
 - (1) Prior to the initiation of construction of each project included in the capital improvements plan which will be funded by the board, the applicant will obtain from the executive administrator approval of the engineering feasibility data as addressed in §375.36 of this title (relating to Engineering Feasibility Data), a favorable environmental determination as addressed in §375.35 of this title (relating to Required Environmental Review and Determination) or §375.214 of this title (relating to Required Environmental Review and Determination), whichever is applicable; approval of design plans and specifications as addressed in §375.62 of this title (relating to Approval of Contract Documents). Prior to the initiation of construction, applicant will additionally submit to the executive administrator bidding documents, including executed contracts for the project.

- (2) The executive administrator will make periodic inspections of projects under §375.82 of this title (relating to Inspection During Construction).
- (3) The executive administrator will advise the board concerning projects that involve major economic or administrative impacts to the applicant resulting from environmentally-related special mitigative or precautionary measures from an environmental assessment under §375.35 of this title or as conditions in the environmental determination required by §375.214 of this title as applicable.
- (d) After the board's preliminary eligibility determination under subsection (b) of this section and after all requirements under subsection (c) of this section have been met, any of the project(s) included in the applicant's capital improvements plan may be considered for a commitment for financial assistance. An applicant must submit an application which includes the following:
 - (1) all applicable information required in §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Legal Information), and §375.34 of this title (relating to Required Fiscal Information);
 - (2) a water conservation plan required by §375.37 of this title (relating to Required Water Conservation Plan); and
 - (3) any additional information the executive administrator may request to complete evaluation of the financial application.
- (e) After board commitment and after completion of all closing and release prerequisites specified in §375.39, §375.71, or §375.72 of this title, funds will be released.
- (f) The executive administrator may recommend to the board the use of this section if, based on available information submitted under subsection (b), (c) or (d) of this section, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. Any request for preliminary eligibility determination or financing under this option may be considered by the board despite a negative recommendation from the executive administrator.
- (g) An applicant with outstanding commitments for financial assistance for projects previously approved by the board or with funds available from closed loans may utilize identified funds from the outstanding commitments or closed loans for costs approved in the preliminary eligibility determination when the requirements in subsection (c) of this section have been met. If the applicant uses this subsection, the board cannot guarantee that additional funds for projects or work previously approved by the board will be available. The applicant must submit a new request for additional financial assistance in the event funds from outstanding commitments or closed loans are utilized for projects in the preliminary eligibility determination and additional funding is required to complete the projects. The provisions of this subsection may not be used if the previously committed or closed loans are backed by project-specific revenues as opposed to system revenues or tax pledges of the applicant.

DIVISION 4. BOARD ACTION ON APPLICATION
Texas Administrative Code Sections 375.51 - 375.53

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and 15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.51. Formal Action by the Board.

- (a) Presentation to board. The executive administrator shall present the application to the board after completing the review pursuant to §375.38 of this title (relating to Review of Applications by the Executive Administrator), and shall include comments concerning the best method of making financial assistance available. Upon the executive administrator's finding that the application is complete and in order for board review, the application shall be placed on the following month's agenda for board consideration. The applicant and other interested parties known to the board shall be notified of the time and place of such meeting. Evidence and arguments both for and against the granting of the application may be heard at such meeting.
- (b) Action by board. At the conclusion of the meeting to consider the project, the board may resolve to approve, disapprove, amend, or continue consideration of the application. The board shall approve an application only if the board finds that in its opinion the revenue or taxes or both revenue and taxes pledged by the applicant will be sufficient to meet all obligations assumed by the applicant and that the application and assistance applied for meet the requirements of the federal act and state law.
- (c) Commitment period. Loan approval action will include specification of a commitment period, after which time the commitment shall expire, unless extended by the board. The board may make any changes in the original commitment at the time of the extension.

Adopted effective February 11, 1999

§375.52. Lending Rates.

- (a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.
- (1) Average life - the number determined by dividing the sum of the payment periods of all maturities of a loan by the total principal amount delivered to the borrower;
 - (2) Borrower - each eligible applicant receiving a loan from the board;
 - (3) Delphis - Delphis Hanover Corporation Range of Yield Curve Scales;
 - (4) Loan interest rate - the individual interest rate for each maturity of a loan as identified by the executive administrator under this chapter;
 - (5) Market rate - the individual interest rate for each maturity of a loan payment that is the borrower's market cost of funds based on the Delphis index's scale for the borrower as identified under subsection (c)(1) of this section;
 - (6) Payment period - the number determined by multiplying the total principal amount due for an individual maturity as set forth in the loan by the standard period for the loan;
 - (7) Standard period - the number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360-day year composed of twelve 30-day periods and dividing that number by 360.
- (b) Procedure for setting fixed interest rates.
- (1) The executive administrator will set fixed rates for loans on a date that is:
 - (A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and
 - (B) not more than 45 days before the anticipated closing of the loan from the board.
 - (2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.
- (c) Fixed Rates. The fixed interest rates for loans from the CWSRF program account under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate appropriate for the borrower, apply the identified interest rate adjustment to the market rate for the borrower to determine the loan interest rate, and apply the loan interest rate to the proposed principal schedule, as more fully set forth in this subsection.
- (1) To identify the market rate:
 - (A) for borrowers that will not have bond insurance and with a rating by a recognized bond rating entity, the executive administrator will rely on the higher of the Delphis scale for the current bond rating of the borrower or the Delphis 90 index;
 - (B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the borrower's market cost of funds as related to the Delphis 90 index; or
 - (C) for borrowers with bond insurance and that are rated by a recognized rating entity or for borrowers with bond insurance and no rating by a recognized bond rating entity, the executive administrator will rely on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.
 - (2) The program is designed to provide borrowers with a 70 basis point reduction from the market rate based on a level debt service schedule. For borrowers to which §375.18(c) of this title (relating to Administrative Cost Recovery) must be applied or for borrowers which choose to have §375.18(c) of this title applied, the program is designed to provide borrowers with a 95 basis point reduction from the market rate based on a level debt service schedule. Notwithstanding the foregoing, in no event shall the loan interest rate as determined under this section be less than zero.
 - (3) To determine the loan interest rate, the following procedures will apply:
 - (A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the loan interest rate will be determined based on a debt service schedule that provides interest only will be paid in the first year of the debt service schedule and in which the annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate Delphis scale for the borrower and identify the market rate for the maturity due in the year preceding the year in which the average life is reached. The executive administrator will reduce that market rate by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed loan interest rate. The proposed loan interest rate will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed loan interest rate will be the loan interest rate for the loan. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest

rate for any or all of the maturities to identify the loan interest rate that as closely as possible achieves the interest savings applicable according to paragraph (2) of this subsection while maintaining the principal schedule proposed by the borrower

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the loan, as determined by the executive administrator. In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this subsection. From the level debt service schedule, the executive administrator will determine the amount of the subsidy that would have been provided if the annual debt service payments had been level. The executive administrator will then identify the loan interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

- (d) Variable rates. The interest rate for variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the CWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (b) and (c) of this section.
- (e) Adjustment of interest rate. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

Adopted effective February 11, 1999

Amended effective January 6, 2004

§375.53. Financial Guarantees for Political Subdivision Bonds and Required Reserves.

- (a) Financial Guarantees. The board will consider accepting surety bonds in lieu of required cash reserve deposits and insurance policies for political subdivision bonds. At the time of loan commitment and at loan closing, only those financial guarantors that have been approved by the board or its Finance Committee are authorized to underwrite financial guarantee policies on political subdivision bonds approved by the board.
- (b) Criteria for Authorized List. The board will maintain a list of authorized financial guarantors. In order to be considered for placement on the list, a guarantor must meet the following minimum criteria:
- (1) the financial guarantor must be a nationally recognized provider of municipal bond insurance and must have a triple-A insurer financial strength rating with Standard & Poor's, Moody's Investors Service, Inc. and Fitch, Inc.; and
 - (2) the financial guarantor must have a triple-A insurer financial enhancement rating with Standard & Poor's.
- (c) Review of Policies. The executive administrator shall review all policies of insurance submitted by authorized financial guarantors and may reject any policy of insurance or surety bond which does not protect the interests of the board's financial program.
- (d) Removal from Authorized List. The executive administrator may remove a financial guarantor from the authorized list at any time that a change in status would cause the financial guarantor to fail to meet the minimum criteria.

Adopted effective August 7, 2001

DIVISION 5. ENGINEERING REQUIREMENTS Texas Administrative Code Sections 375.61 - 375.62

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.61. Contract Documents. An applicant shall obtain executive administrator approval of contract documents, including engineering plans and specifications, prior to receiving bids and awarding the contract. The applicant shall submit three copies of contract documents; which shall be as detailed as would be required for submission to contractors bidding on the work, and which shall be consistent with the engineering feasibility data submitted with the application. The contract documents must contain the following:

- (1) provisions assuring compliance with the board's rules and all relevant statutes;
- (2) forms by which the performance and payment bonds will be provided;
- (3) provisions requiring the contractor to obtain and maintain the appropriate insurance coverage;

- (4) provisions providing for the applicant to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until the building of the project is substantially complete and a reduction in the retainage is authorized by the executive administrator;
- (5) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board;
- (6) provisions giving authorized representatives of the board access to all such construction activities, books, records, documents and other evidence of the contractor for the purpose of inspection, audit and copying during normal business hours; and
- (7) any additional conditions that may be requested by the executive administrator.

§375.62. Approval of Contract Documents.

- (a) Approval. The executive administrator will approve the contract documents if they:
 - (1) conform to the requirements listed in this subsection;
 - (2) are consistent with all relevant statutes, including the Texas Water Code;
 - (3) pass a biddability, operability, and constructability review by the executive administrator; and
 - (4) are consistent with the engineering feasibility data and environmental determinations required by §375.35 of this title (relating to Required Environmental Review and Determination) and §375.36 of this title (relating to Engineering Feasibility Data).
- (b) Advertisement for bids. The applicant shall obtain authorization from the executive administrator before advertising for bids on the project.
- (c) Other approvals. The applicant shall obtain the approval of the plans and specifications from each state and federal agency having jurisdiction over the project. The executive administrator's approval of the contract documents does not relieve the applicant of any liabilities or responsibilities with respect to the design, construction, operation, or performance of the project.

DIVISION 6. PREREQUISITES TO RELEASE OF FUNDS
Texas Administrative Code Sections 375.71 - 375.73

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.71. Loan Closing.

- (a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:
 - (1) evidence that requirements and regulations of all identified local, state and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations;
 - (2) certified copy of the ordinances or resolutions adopted by the governing body authorizing issuance of debt sold to the board which has received prior approval by the executive administrator and which shall have sections providing:
 - (A) that an escrow account, if applicable, shall be created which shall be separate from all other funds and that:
 - (i) the account shall be maintained at an escrow agent bank or maintained with the trust agent;
 - (ii) funds shall not be released from the escrow account without written approval by the executive administrator;
 - (iii) the escrow account bank statements or trust account statement will be provided on a monthly basis to the executive administrator's office; and
 - (iv) the escrow account will be adequately collateralized as determined by the executive administrator sufficient to protect the board's interest;
 - (B) that a construction fund shall be created which shall be separate from all other funds of the applicant;
 - (C) that a final accounting be made to the board of the total sources and authorized use of project funds and that any surplus loan funds be used in a manner as approved by the executive administrator;
 - (D) that an annual audit of the applicant, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant be provided annually to the executive administrator;
 - (E) that the applicant shall fix and maintain rates and collect charges to provide adequate operation, maintenance and insurance coverage on the project in an amount sufficient to protect the board's interest;
 - (F) that the applicant will implement any water conservation program required by the board until all financial obligations to the state have been discharged;

- (G) that the applicant shall maintain current, accurate and complete records and accounts necessary to demonstrate compliance with generally accepted government accounting standards and other financial assistance related legal and contractual provisions;
- (H) that the applicant covenants to abide by the board's rules and relevant statutes, including the Texas Water Code, Chapter 15, subchapter J; and
- (I) that the applicant, or an obligated person for whom financial or operating data is presented, will undertake, either individually or in combination with other issuers of the applicant's obligations or obligated persons, in a written agreement or contract to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) rule 15c2-12 and determined as if the board were a participating underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the board and the beneficial owner of the applicant's obligations, if the board sells or otherwise transfers such obligations, and the beneficial owners of the board's bonds if the applicant is an obligated person with respect to such bonds under rule 15c2-12;

- (3) two copies of the applicant's water conservation program, including documentation of local adoption;
- (4) unqualified approving opinions of the attorney general of Texas and a certification from the comptroller of public accounts that such debt has been registered in that office;
- (5) unqualified approving opinion by a recognized bond attorney acceptable to the executive administrator;
- (6) executed escrow agreement entered into by the applicant and an escrow agent bank or an executed trust agreement entered into by the applicant and the trust agent satisfactory to the executive administrator, in the event that construction funds are escrowed;
- (7) evidence that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;
- (8) assurances that the applicant will comply with any special conditions specified by the board's environmental determination until all financial obligations to the state have been discharged; and
- (9) other or additional data and information, if deemed necessary by the executive administrator.

Certified transcript. At such time as available following the final release of funds the applicant shall submit a transcript of proceedings relating to the debt purchased by the board which shall contain those instruments normally furnished a purchaser of debt.

- (c) Refinancing construction loans. If the project includes the refinancing of a loan, the applicant shall submit all of the items specified in subsection (a) of this section and any records, assurances, or appraisals concerning the construction of the project. Additionally, the project must pass the executive administrator's inspection of the project.
- (d) Loan closing prior to completion of design. In the event financial assistance is needed by the applicant to complete design of a project without escrow of funds for building under §375.39 of this title (relating to Pre-Design Funding Option), the executive administrator will so advise the board. The board at its option may authorize the executive administrator to close the loan for planning and design without requiring the submittals in subsection (a)(1) and (6) of this section. However, the submittals in subsection (a)(1) of this section will be required prior to delivery of funds for building purposes. Applicants wishing to close prior to obtaining required commission permits will be required to present documentation that the required permits are expected to be issued.
- (e) Loan closing for phased construction. The executive administrator may determine it appropriate to close only a portion of a loan for a phased construction project unless the applicant can demonstrate the need for phased construction and that closing the portion of the loan desired by the applicant is necessary to expedite construction.
- (f) Closing requirements. The applicant shall be required to comply with the following closing requirements:
 - (1) all loans shall be closed in book-entry-only form;
 - (2) the applicant shall use a paying agent/registrar that is a Depository Trust Company (DTC) participant;
 - (3) the applicant shall be responsible for paying all DTC closing fees assessed to the applicant by the board's custodian bank directly to the board's custodian bank; and
 - (4) the applicant shall provide evidence to the board that one fully registered bond has been sent to the DTC or to the applicant's paying agent/registrar prior to closing.

Adopted effective February 11, 1999

Amended effective May 6, 2003

§375.72. Release of Funds.

- (a) Release of funds for planning, design and permits. Prior to the release of funds for planning, design, and permits, the political subdivision shall submit for approval to the executive administrator the following documents:
 - (1) a statement as to sufficiency of funds to complete the activity;
 - (2) certified copies of each contract under which revenues for repayment of the political subdivision's debt will accrue;

- (3) executed consultant contracts relating to services provided for planning, design, and/or permits; and
 - (4) evidence that the requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including but not limited to permits and authorizations; and
 - (5) other such instruments or documents as the board or executive administrator may require.
- (b) Pre-design funding. The funds needed for the total estimated cost of the engineering planning, and design cost if the engineering feasibility data required under §375.36 of this title (relating to Engineering Feasibility Data) has been approved, the cost of issuance associated with the loan, and any associated capitalized interest will be released to the loan recipient and the remaining funds will be escrowed to the escrow agent bank or to the trust agent until all applicable requirements in subsections (a) and (c) of this section and §375.39 of this title (relating to Pre-Design Funding Option) have been met.
- (c) Release of funds for building purposes. Prior to the release of funds for building purposes, the political subdivision shall submit for approval to the executive administrator the following documents:
- (1) a tabulation of all bids received and an explanation for any rejected bids or otherwise disqualified bidders;
 - (2) one executed original copy of each construction contract the effectiveness and validity of which is contingent upon the receipt of board funds;
 - (3) evidence that the necessary acquisitions of land, leases, easements and rights-of-way have been completed or that the applicant has the legal authority necessary to complete the acquisitions;
 - (4) a statement as to sufficiency of funds to complete the project;
 - (5) certified copies of each contract under which revenues to the project will accrue;
 - (6) evidence that all requirements and regulations of all identified local, state, and federal agencies having jurisdiction have been met, including permits and authorizations;
 - (7) evidence that the project is consistent with plans, if any, developed under the Act, §§205(j), 208, 303(e), 319 and 320, as well as the applicable sections of the Clean Air Act which apply to the project receiving the financial assistance;
 - (8) an updated schedule of projected monthly reimbursements for eligible project costs to be requested by the applicant throughout the project funding period. Any eligible project costs which will be paid by the applicant prior to receiving reimbursement must be identified separately in this schedule; and
 - (9) other such instruments or documents as the board or executive administrator may require.
- (d) Release of funds for projects constructed through one or more construction contracts. For projects constructed through one or more construction contracts, the executive administrator may approve the release of funds for all or a portion of the estimated project cost, provided all requirements of subsection (c) of this section have been met for at least one of the construction contracts.
- (e) Escrow of funds. The executive administrator may require the escrow of an amount of project funding related to contracts which have not met the requirements of subsection (c) of this section at the time of loan closing.
- Adopted effective February 11, 1999 | Amended effective February 10, 2000

§375.73. Movement of Funds Between Approved Projects. If approved by the executive administrator, a borrower may transfer remaining excess funds from one or more of the borrower's board-approved projects under this chapter to other of the borrower's board-approved projects under this chapter only if the project to which funds are being transferred has met all requirements imposed on projects by §375.212 of this title (relating to Capitalization Grant Requirements) and §375.35 of this title (relating to Required Environmental Review and Determination). Applicants must comply with any new requirements triggered by the transfer of funds.

Adopted effective February 11, 1999 |

DIVISION 7. BUILDING PHASE
Texas Administrative Code Sections 375.81 - 375.87

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.81. Awarding Construction Contracts.

- (a) The applicant shall be responsible for assuring that every appropriate procedure and incidental legal requirement is observed in advertising for bids and awarding the construction contract. Any submittals waived by §375.71 of this title (relating to Loan Closing) will be submitted to the executive administrator for approval prior to awarding any construction contracts and releasing funds for building purposes. The text of the construction contract shall not vary from the text of the executive administrator-approved pro forma draft submitted by the loan recipient.

- (b) Prior to initiation of construction, the applicant shall conduct a preconstruction conference on each significant construction contract to address the contents of the executed contract documents with the project engineer, prime contractor, and other appropriate parties in attendance. The executive administrator shall be given at least five days advance notice of the date, time, and location for the preconstruction conference.

§375.82. Inspection During Construction. After the construction contract is awarded, the applicant shall provide for adequate qualified inspection of the project under the supervision of a registered professional engineer and require the engineer's assurance that the work is being performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and in accordance with sound engineering principles and construction practices. The executive administrator is authorized to inspect the construction and materials of any project at any time, but such inspection shall never subject the State of Texas to any action for damages. The executive administrator shall bring to the attention of the applicant any deviations from the approved contract documents. The applicant and the project engineer shall immediately initiate necessary corrective action.

Adopted effective February 11, 1999

Amended effective February 10, 2000

§375.83. Alterations in Approved Contract Documents. If after the executive administrator approves engineering contract documents it becomes apparent that changes in such contract documents are necessary or appropriate, a change order and justification therefore shall be submitted for approval, well in advance of the building alteration when possible. The executive administrator may approve and authorize a change, alteration, or variance in previously approved engineering contract documents, including, but not limited to, additions or deletions of work to be performed pursuant to the contract, if such change, alteration, or variance does not change, vary, or alter the basic purpose or effect of a project, is not a substantial or material alteration in the contract documents, and does not increase the loan commitment of the board for the project. Any change, alteration, or variance in the previously approved contract documents which involves an alteration in the basic purpose or effect of a project, substantially or materially alters the previously approved contract documents of the project, or which involves an increase in the loan commitment of the board for the project, must be approved and authorized by the board. If there is an immediate danger to life or property, tentative approval of change orders may be secured from the executive administrator via telephone and confirmed in writing. A request for a change order should contain sufficient information, with plans or drawings and cost estimates, to enable the executive administrator to review the proposal. Engineering computations shall be included if structural changes are involved. After approval of the proposed alterations, copies of the approved change order shall be forwarded to the project engineer. If commission approval of plans for a wastewater treatment plant or other facility has been required, commission approval also must be obtained before any substantial or material alteration is made in those plans.

§375.84. Contractor Bankruptcy. In the event of a contractor bankruptcy, any agreements entered into with the bonding company, (other than the bonding company serving as general contractor or fully bonding another contractor acting as their agent), must be submitted for approval of the executive administrator. The applicant shall be responsible for assuring that every appropriate procedure and all legal requirements are observed in advertising for bids and re-awarding a construction contract.

§375.85. Building Phase Submittals. After a project is completed, the applicant shall submit documentation that the applicant has received from the contractor a complete set of as-built drawings of the project.

Adopted effective February 11, 1999

Amended effective February 10, 2000

§375.86. Retainage.

- (a) Retainage withheld. Progress payments to the prime contractor should be for no more than 95% of the actual work completed at the time of the payment request.
- (b) Partial release of retainage. If a project is substantially complete, a partial release of the 5.0% retainage may be made by the applicant with the approval of the executive administrator.
- (c) Final release of retainage. After completion of construction and issuance of a certificate of approval by the development fund manager, the final release of remaining retainage may be made.

Adopted effective February 11, 1999

§375.87. Disbursements and Outlay Reports. Disbursements from the construction fund established by the applicant will require approval by the executive administrator. Certified requests for payment shall be submitted to the executive administrator monthly. Upon approval by the executive administrator, funds may be disbursed for authorized project costs. At the discretion of the executive administrator, applicants whose projects are not funded with federal grant funds will not be required to comply with this section but will be required to submit outlay reports with appropriate documentation on forms acceptable to the executive administrator.

Adopted effective February 11, 1999

DIVISION 8. POST BUILDING PHASE
Texas Administrative Code Sections 375.101 - 375.105

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.101. Responsibilities of Applicant. After the satisfactory completion of the project, the applicant shall be held accountable by the board for the continued validity of all representations and assurances made to the board. Continuing cooperation with the board is required. To facilitate such cooperation and to enable the board to protect the state's investment and the public interest, the following provisions shall be observed.

- (1) The executive administrator is authorized to inspect the project and the records of operation and maintenance of the project at any time. If it is found that the project is being improperly or inadequately operated and maintained to the extent that the project purposes are not being properly fulfilled or that integrity of the state's investment is being endangered, the executive administrator shall require the applicants to take corrective action.
- (2) The executive administrator may request certified copies of all minutes, operating budgets, monthly operating statements, contracts, leases, deeds, audit reports, and other documents concerning the operation and maintenance of the project in addition to the requirements of the covenants of the bond indenture. The financial assistance provided by the board is based on the project's economic feasibility, and the board shares the applicant's desire to maintain this feasibility in the project's operation and maintenance at all times. The executive administrator shall periodically inspect, analyze, and monitor the project's revenues, operation, and any other information the board requires in order to perform its duties and to protect the public interest.
- (3) The applicant shall maintain debt service fund accounts and all other fund accounts related to the CWSRF debt in accordance with standards set forth by the Governmental Accounting Standards Board.
- (4) Applicants shall maintain an approved water conservation program in effect until all financial obligations to the state have been discharged and shall report annually to the executive administrator on the implementation and status of required water conservation programs for three years after the date of loan closing. If the executive administrator determines that the water conservation program is not in compliance with the approved water conservation plan, the political subdivisions shall continue to supply annual reports beyond the three years until the executive administrator determines that deficiencies in the plan have been resolved. Annual reports prepared for the commission providing the information required by this subparagraph may be provided to the board to fulfill the board's reporting requirements.
- (5) Applicants which were required to implement mitigative measures as a result of the environmental review process shall continue to comply with those measures.
- (6) Should any information obtained by the executive administrator indicate noncompliance with any agreements, the executive administrator shall require the political subdivision to take timely corrective action. Failure to correct problems may be cause for referral to the Attorney General.

Adopted effective February 11, 1999

§375.102. Final Accounting. Upon completion of the project and after the applicant submits the final funds requisition, a final accounting will be made to the executive administrator. The applicant will retain all CWSRF construction records for three full state fiscal years following the submission of the final funds requisition.

Adopted effective February 11, 1999

§375.103. Audits. The executive administrator is authorized to conduct engineering and financial audits of every project which is financed in whole or in part by board financial assistance. Audits may be conducted on site if necessary and board staff shall be provided access to all project records necessary to complete such audit. The political subdivision shall take actions to correct any items found to be in noncompliance with agreements relating to board financial assistance.

Adopted effective February 11, 1999

§375.104. Certificate of Approval. Upon certification from the political subdivision and project engineer that the project was completed in accordance with approved plans and specifications, the development fund manager shall issue a certificate of approval that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

§375.105. **Final Release of Retainage.** After issuance of a certificate of approval, the final release of retainage may be made.
Adopted effective February 11, 1999

**SUBCHAPTER B. PROVISIONS PERTAINING TO USE OF
CAPITALIZATION GRANT FUNDS
DIVISION 1. INTRODUCTORY PROVISIONS
Texas Administrative Code Section 375.201**

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.201. **Scope of Subchapter.** The sections of Subchapter B shall pertain to applications for financial assistance from the Clean Water State Revolving Fund that are needed to satisfy the federal requirements for the state's receipt of federal capitalization grant funds. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this title (relating to General Provisions) shall also apply to applications for financial assistance under this subchapter.
Adopted effective February 11, 1999

**DIVISION 2. PROGRAM REQUIREMENTS
Texas Administrative Code Sections 375.211 - 375.214**

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.211. **Capitalization Grant Application.** After the board approves the intended use plan and priority list, the executive administrator shall submit these items with an application for the capitalization grant for that fiscal year to the EPA.
Adopted effective February 11, 1999

§375.212. **Capitalization Grant Requirements.**

(a) All projects which receive assistance from the fund and will be constructed in whole or part with funds directly made available by capitalization grants shall satisfy the following federal requirements:

- (1) National Environmental Policy Act of 1969, PL 91-190;
- (2) Archeological and Historic Preservation Act of 1974, PL 93-291;
- (3) Clean Air Act, 42 USC 7506(c);
- (4) Coastal Barrier Resources Act, 16 USC 3501 et seq;
- (5) Coastal Zone Management Act of 1972, PL 92-583, as amended;
- (6) Endangered Species Act, 16 USC 1531, et seq;
- (7) Executive Order 11593, Protection and Enhancement of the Cultural Environment;
- (8) Executive Order 11988, Floodplain Management;
- (9) Executive Order 11990, Protection of Wetlands;
- (10) Farmland Protection Policy Act, 7 USC 4201 et seq;
- (11) Fish and Wildlife Coordination Act, PL 85-624, as amended;
- (12) National Historic Preservation Act of 1966, PL 89-665, as amended;
- (13) Safe Drinking Water Act, §1424(e), PL 92-523, as amended;
- (14) Wild and Scenic Rivers Act, PL 90-542, as amended;
- (15) Demonstration Cities and Metropolitan Development Act of 1966, PL 89-754, as amended;
- (16) Clean Air Act, §306 and Clean Water Act, §508, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans;
- (17) Age Discrimination Act, PL 94-135;
- (18) Civil Rights Act of 1964, PL 88-352;
- (19) PL 92-500, §13; Prohibition against sex discrimination under the Federal Water Pollution Control Act;
- (20) Executive Order 11246, Equal Employment Opportunity;
- (21) Executive Orders 11625 and 12138, Women's and Minority Business Enterprise;
- (22) Rehabilitation Act of 1973, PL 93-112 (including Executive Orders 11914 and 11250);
- (23) Uniform Relocation and Real Property Acquisition Policies Act of 1970, PL 91-646;
- (24) Executive Order 12549, Debarment and Suspension;
- (25) The Wilderness Act, 16 USC 1131 et seq.;
- (26) Environmental Justice, Executive Order 12898;

- (27) Clean Water Act, PL 92-500, as amended; and
- (28) Section 129, Small Business Administration Reauthorization and Amendment Act of 1988, PL 100-590.
- (b) Requirements for minority business enterprise/women's business enterprise/small business enterprise/small business enterprise in a rural area.
- (1) Definitions. For the purposes of this subsection the following definitions shall apply.
- (A) Construction - Notwithstanding the provisions of §375.2 of this title (relating to Definition of Terms), any contract or agreement to provide the building, erection, alteration, remodeling, improvement or extension of a CWSRF funded project.
- (B) Contract - A written agreement between a CWSRF recipient and another party and any lower tier agreement for equipment, supplies, or construction necessary to complete the project. Includes personal and professional services, agreements with consultants, and purchase orders.
- (C) Equipment - Tangible, nonexpendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.
- (D) MBE - A minority business enterprise, a business concern that is:
- (i) at least 51% owned by one or more minority individuals who are U. S. Citizens, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more minority individuals who are U. S. Citizens; and
- (ii) whose daily business operations are managed and directed by one or more of the minority owners. Minority individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans or other groups whose members have been found to be disadvantaged by the Small Business Act or by the Secretary of Commerce under Executive Order 11625, §5.
- (E) Prime contract - Any contract, agreement or other action entered into by a CWSRF applicant to procure construction, services, equipment or supplies.
- (F) SBE - A small business enterprise, a business concern, including its affiliate, that is independently owned and operated, not dominant in the field of operation in which it operates, and that is qualified as a small business by the Small Business Administration.
- (G) SBRA - A small business enterprise in a rural area, a small business concern that is located and conducts its principal operations in a non-metropolitan county as delineated by the Small Business Administration.
- (H) Services - A contractor's time and efforts which do not involve delivery of a specific end item other than documents (e.g. reports, design drawings, specifications, etc.).
- (I) Subcontract - Any contract, agreement or other action to procure construction, services, equipment or supplies between a prime contractor and any other business to supply such goods or services for a CWSRF financial assistance action.
- (J) Supplies - All tangible personal property other than equipment.
- (K) WBE - A women's business enterprise, a business concern that is:
- (i) at least 51% owned by one or more women, or in the case of a publicly owned business, at least 51% of the stock is owned by one or more women; and
- (ii) whose daily business operations are managed and directed by one or more of the women owners.
- (2) Affirmative action steps. Those steps necessary by the applicant and the prime contractor to ensure that MBEs, WBEs, SBEs and SBRA are utilized when possible including:
- (A) placing qualified MBEs, WBEs, SBEs and SBRA on solicitation lists;
- (B) assuring that MBEs, WBEs, SBEs and SBRA are solicited whenever they are potential sources;
- (C) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBEs, WBEs, SBEs and SBRA;
- (D) establishing delivery schedules, where the requirement permits, which encourage participation by MBEs, WBEs, SBEs and SBRA;
- (E) using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (F) requiring the prime contractor, if subcontracts are to be let, to take the affirmative action steps listed in subparagraphs (A) thru (E) of this paragraph.
- (3) Requirements for applicants.
- (A) Pursuant to EPA policy and legal requirements, a goal oriented system has been established to promote MBE and WBE participation on all projects receiving funds from the CWSRF. In addition, it is the intent that SBEs and SBRA be afforded the maximum practicable opportunity to participate in the CWSRF financial assistance program.

- (B) Prior to receiving a loan commitment the applicant will submit an affirmative action plan on forms provided by the board. The plan shall be signed by the authorized representative of the applicant and shall contain estimates and/or actual amounts of MBE and WBE participation in the categories of construction, services, equipment, or supplies. Copies of any existing or proposed MBE and WBE contracts should be attached.
- (C) In all procurements, the applicant will undertake a good faith effort to attract and utilize MBE, WBE, SBE and SBRA participation. This must include, but not be limited to taking the six affirmative action steps.
- (D) In all procurements, the applicant will include provisions in prime contracts requiring the prime contractors to submit an affirmative action plan, and to undertake a good faith effort to attract and utilize MBEs, WBEs, SBEs and SBRA, through subcontracts. This must include but not be limited to taking the affirmative action steps described in paragraphs (2)(A)-(E) of this subsection.
- (E) As a condition to the release of funds or at any other time contracts or subcontracts are entered into, the applicant will report MBE and WBE participation and will provide documentation of good faith efforts on forms provided by board staff.
- (F) The applicant and the prime contractor(s) will maintain all records documenting required good faith efforts.

Adopted effective February 11, 1999

Amended effective October 10, 2001

§375.213. Distribution of Funds.

- (a) Notice of availability of funds. Because this subchapter imposes requirements greater than those in Subchapter A of this chapter (relating to General Provisions), the board generally provides lower interest rates for projects funded under Subchapter B of this chapter (relating to Provisions Pertaining to Use of Capitalization Grant Funds). The board will limit funding under this subchapter only to that dollar amount of projects reasonably necessary to meet federal requirements. The executive administrator, upon determining that it is necessary to seek projects to be funded under the requirements of this subchapter, will provide notice of availability of funds at a lower interest rate in the annual intended use plan prepared in accordance with this chapter. The executive administrator will also provide notice by direct mail to political subdivisions with projects listed above the funding line in the annual intended use plan. The notice shall invite applications for the lower interest rate funds and shall specify the approximate dollar amount of projects that the board intends to fund through this chapter.
- (b) Refundings. The board will not provide funding under this chapter for refunding projects for which a loan has already been closed.
- (c) Method for distribution of funds. Applications from applicants receiving a notice under subsection (a) of this section will be presented for board action on a first- come, first-served basis unless a fund shortage exists.
- (d) Funds shortage. A fund shortage is considered to exist when on the first business day of the month of the board meeting the cumulative amount of funds previously committed pursuant to subsection (a) of this section, plus the amount of funds required to fund all applications which are complete and ready for scheduling for board action exceeds the amount of funds identified as available for such funding in the notice under subsection (a) of this section. Applications are considered to be complete and ready for board action if they meet the requirements of §375.32 of this title (relating to Required General Information), §375.33 of this title (relating to Required Legal Information), and §375.34 of this title (relating to Required Fiscal Information) and either both §375.35 of this title (relating to Required Environmental Review and Determination) and §375.36 of this title (relating to Engineering Feasibility Data) of this title or §375.39 of this title (relating to Pre-Design Funding Option).
- (e) Scheduling of applications. Applications which are ready for scheduling for board action at the time a fund shortage occurs will be presented for board action under this chapter as follows:
 - (1) first, applications for treatment works in the order of their priority ranking in accordance with §375.16 of this title (relating to Rating Process); and
 - (2) next, if additional funds are available, to applications for implementing management programs for nonpoint source pollution under the Act, §319, and applications for developing and implementing conservation and management plans under the National Estuary Program under the Act, §320, in the order of the receipt of completed applications.
- (f) Utilization of available funds. Funds will be made available to applicants under the provisions of subsections (c)-(e) of this section in the order specified until available funds identified in subsection (a) of this section, have been utilized. If funds are available under this subchapter for only part of an application, the remainder of the project may be funded under the CWSRF interest rate associated with loans under Subchapter A. Applications for projects for which no funds are available under this subchapter will be considered under Subchapter A, unless the applicant indicates it does not want to proceed under such chapter.

Adopted effective February 11, 1999

§375.214. Required Environmental Review and Determination.

- (a) General. The applicant's preparation of the environmental information and the executive administrator's review and issuance of a determination forms an integral part of the planning process required of any potential applicant to the fund. There are three levels of environmental information required, varying according to the nature and scope of the project and the environment in which it is proposed. Correspondingly, the appropriate level of review will be conducted by the board and formal determinations documenting the review are issued. The categorical exclusion (CE) is directed toward those applicants proposing only minor rehabilitation or functional replacement of existing equipment. Although the environmental information required is small, the proposed project must fit a narrow range of criteria defined in paragraph (1)(A) of this subsection. The CE must be revoked and an environmental information document (EID) must be prepared if the project is subsequently modified so as to exceed the limits of the criteria. The majority of applicants will prepare an EID, developed in accordance with guidance available from the board. In addition to a greater amount of information to be supplied by the applicant, a public hearing must be held on the proposed project and the determination, a finding of no significant impact (FNSI), is also subject to public comment for a period no less than 30 days following its issuance. All applicants whose proposed projects do not meet the criteria for either a CE or environmental impact statement (EIS) must prepare an EID. Although there are other criteria involved, as described in paragraph (1)(C) of this subsection and subsection (d)(3) of this section, an EIS is usually required of those projects that are so major in scope or involve such environmentally sensitive areas (i.e., floodplains, endangered species habitat, etc.) that the proposed project may have significant adverse social or environmental impacts. An EIS requires close coordination and involvement of the board and other agencies in its preparation and results in a record of decision (ROD).

The board's staff shall endeavor to provide guidance as to the appropriate level of environmental information to applicants during the pre-planning process. All applicants are urged, however, to review the criteria and contact the board's staff, particularly if there is doubt as to the level of environmental information that is appropriate to the proposed project. Based on the environmental information and as required by the provisions of the Act, §602(b)(6) and §375.212 of this title (relating to Capitalization Grant Requirements), the executive administrator will conduct an independent and interdisciplinary environmental review consistent with the National Environmental Policy Act (NEPA) of all projects funded through the CWSRF. This review will further insure that the proposed project will comply with the applicable local, state, and federal laws and board rules relating to the protection and enhancement of the environment.

Based upon the staff's review, the executive administrator will make formal determinations regarding the potential social and environmental impacts of the proposed project. As necessary, the determinations will include mitigative provisions recommended to be applied as a condition of receiving financial assistance. Funds will not be released for building until a final environmental determination has been made. Proposed projects using the pre-design funding option will follow the environmental review procedures described under paragraph (2)(C) of this subsection.

- (1) Basic environmental determinations. There are three basic environmental determinations that will apply to projects proposed to be implemented with assistance from the fund. These are: a determination to categorically exclude a proposed project from a formal environmental review, a FNSI based upon a formal environmental review supported by an EID, and a determination to provide or not provide financial assistance based upon a ROD following the preparation of an EIS. The appropriate determination will be based on the following criteria.
- (A) The CE determination applies to categories of projects that have been shown over time not to entail significant impacts on the quality of the human environment.
- (i) Proposed projects which meet the following criteria may be categorically excluded from formal environmental review requirements.
- (I) The proposed project is directed solely toward minor rehabilitation of existing facilities, functional replacement of equipment, or toward the construction of related facilities adjoining the existing facilities that do not affect the degree of treatment or the capacity of the works. Examples include infiltration and inflow correction, rehabilitation of existing equipment and structures, and the construction of small structures on existing sites.
- (II) The proposed project is in a community of less than 10,000 population and is for minor expansions or upgrading of existing treatment works or on-site disposal systems are proposed.
- (ii) CE's will not be granted for proposed projects that entail:
- (I) the construction of new collection lines;
- (II) a new discharge or relocation of an existing discharge;
- (III) a substantial increase in the volume or loading of pollutants;

- (IV) providing capacity for a population 30% or greater than the existing population;
 - (V) known or expected impacts to cultural resources, threatened or endangered species, or other environmentally sensitive areas; or
 - (VI) the construction of facilities which will not be, or apparently will not be, cost-effective or are likely to cause significant public controversy.
- (B) The FNSI will be based upon an environmental review by the staff supported by an EID prepared by the applicant in conformance with guidance developed by the executive administrator. Based upon its review, the staff will prepare an environmental assessment (EA) resulting in the issuance of either a FNSI or a public notice that the preparation of an EIS will be required. All applicants whose projects do not meet the criteria for either a CE or EIS will be required to prepare an EID. The executive administrator's issuance of a FNSI will be based upon an EA documenting that the potential environmental impacts will not be significant or that they may be mitigated without extraordinary measures.
- (C) The ROD may only be based upon an EIS prepared in conformance with the format and guidelines described in subsection (b)(3) of this section. An EIS will be required when the executive administrator determines any of the following:
- (i) the proposed project will significantly affect the pattern and type of land use or growth and distribution of the population;
 - (ii) the effects of a proposed project's construction or operation will conflict with local or state laws or policies;
 - (iii) the proposed project may have significant adverse impacts upon:
 - (I) wetlands;
 - (II) floodplains;
 - (III) threatened and endangered species or their habitats; and
 - (IV) cultural resources including parklands, preserves, other public lands, or areas of recognized scenic, recreational, agricultural, archeological, or historic value;
 - (iv) the proposed project will displace population or significantly alter the characteristics of existing residential areas;
 - (v) the proposed project may directly or indirectly (e.g., through induced development) have significant adverse effect upon local ambient air quality, local noise levels, surface and ground water quantity or quality, fish, shellfish, wildlife or their natural habitats;
 - (vi) the proposed project may generate significant public controversy; or
 - (vii) the treated effluent will be discharged into a body of water where the present classification is being challenged as too low to protect present or recent uses, and the effluent will not be of sufficient quality to meet the requirements of those uses.
- (2) Other determinations that are required of the board.
- (A) Recognizing that a project may be altered at some time after an environmental determination on the proposed project has been issued, the executive administrator will provide that, prior to approval of the alterations, the contract documents, loan application, or related documents will be examined for consistency with the environmental determination. If minor inconsistencies are found and the amended project will not entail adverse environmental impacts different from those previously identified, the project may be allowed to proceed without additional formal environmental review. When substantive inconsistencies are found or new adverse environmental impacts may result, the executive administrator will revoke a CE and require the preparation of an EID or an EIS, consistent with the criteria of subsection (a)(1) of this section, or require the preparation of amendments to an EID or supplements to an EIS, as appropriate. Based upon the staff's review of the amended project, the executive administrator will:
- (i) reaffirm the original environmental determination through the issuance of a public notice or statement of finding;
 - (ii) issue a FNSI when a CE has been revoked, or issue a public notice that the preparation of an EIS will be required;
 - (iii) issue an amendment to a FNSI, or revoke a FNSI and issue a public notice that the preparation of an EIS will be required; or
 - (iv) issue a supplement to a ROD, or revoke the ROD and issue a public notice that financial assistance will not be provided.
- (B) When five or more years have elapsed between the last environmental determination and the submittal of an application to the fund, the executive administrator will re-evaluate the proposed project, environmental

conditions and public views, and prior to presentation of the application to the board, proceed in accordance with subparagraph (A) of this paragraph.

(C) For projects using the pre-design funding option, board staff will use preliminary environmental data provided by the applicant, as specified in §375.39 of this title (relating to Pre-Design Funding Option), and make a written report to the executive administrator on known or potential significant social or environmental concerns before an application for pre-design funding is taken to the board. Prior to release of funds for design, these projects must have approval by the board after the appropriate level of environmental review has been conducted during planning, as provided under this section.

(3) Other determinations that are available to the board.

(A) The executive administrator may adopt previous environmental determinations issued by the EPA and other federal agencies whose determinations may be considered to be current and applicable under the environmental review requirements of this section. In so doing, the executive administrator will insure that all mitigative measures specified in the previous determinations are applied as conditions of the loan agreement and that such adoption will be consistent with the requirements of these rules. The executive administrator will adopt the previous determination by means of a statement of findings, when the proposed project and its previous determination are to be adopted without substantial modifications, or in a FNSI which will explain modifications to the proposed project, potential environmental impacts identified during an environmental review, and any mitigative measures proposed in addition to those included in the federal environmental determination to be adopted.

(B) In order to better inform the public, the executive administrator may issue a statement of findings to interested agencies and public groups describing the outcome of a mitigative condition required by an environmental determination.

(b) Required environmental information. A minimum of three copies of all information required in this subsection shall be submitted to the executive administrator.

(1) Applicants seeking a CE for their proposed projects will provide the executive administrator with sufficient documentation to demonstrate compliance with the criteria of subsection (a)(1)(A) of this section. At a minimum, this will consist of:

(A) a brief, complete description of the proposed project and its costs;

(B) a statement indicating that the project is cost-effective and that the applicant is financially capable of constructing, operating and maintaining the facilities; and

(C) a plan map or maps of the proposed project showing:

(i) the location of all construction areas,

(ii) the planning area boundaries, and

(iii) any known environmentally sensitive areas.

(2) An EID must be submitted by those applicants whose proposed projects do not meet the criteria for a CE and for which the executive administrator has made a preliminary determination that an EIS will not be required. The executive administrator will provide guidance on both the format and contents of the EID to potential applicants prior to initiation of planning.

(A) At a minimum, the contents of an EID will include:

(i) the purpose and need for the project;

(ii) the environmental setting of the proposed project and the future of the environment without the project;

(iii) the alternatives to the project as proposed and their potential environmental impacts;

(iv) a description of the proposed project;

(v) the potential environmental impacts of the project as proposed including those which cannot be avoided;

(vi) the relationship between the short term uses of man's environment and the maintenance and enhancement of long term productivity;

(vii) any irreversible and irretrievable commitments of resources to the proposed project;

(viii) a description of public participation activities conducted, issues raised, and changes to the project which may be made as a result of the public participation process; and

(ix) documentation of required public participation activities and coordination with appropriate governmental agencies.

(B) Prior to the applicant's adoption of the engineering feasibility data, the applicant will hold a public hearing on the proposed project and the EID, and provide the executive administrator with a verbatim transcript of

- the hearing. The executive administrator will provide guidance to the applicant regarding the contents of the hearing notice and of the hearing. The hearing will be advertised at least 30 days in advance in a local newspaper of general circulation. Notice of the public hearing and availability of the documents also will be sent at least 30 days in advance of the public hearing to all local, state, and federal agencies and public and private parties that may have an interest in the proposed project. Included with the transcript will be a list of all attenders, any written testimony, and the applicant's responses to the issues raised.
- (C) The applicant will provide copies of the EID to all federal, state, and local agencies and others with an interest in the proposed project. The executive administrator will provide guidance to the applicant regarding coordination requirements.
- (3) The format of an EIS will encourage sound analysis and clear presentation of alternatives, including the no action alternative and the preferred alternative, and their environmental, economic, and social impacts. The following format must be followed by the applicant unless the executive administrator determines there are compelling reasons to do otherwise:
- (A) a cover sheet identifying the applicant, the proposed project(s), the program through which financial assistance is requested, and the date of publication;
- (B) an executive summary consisting of a 10 to 15 page precis of the critical issues of the EIS in sufficient detail that the reader may become familiar with the proposed project and its cumulative effects. The summary will include:
- (i) a description of the existing problem;
- (ii) a description of each alternative;
- (iii) a listing of each alternative's potential environmental impacts, mitigative measures and any areas of controversy; and
- (iv) any major conclusions;
- (C) the body of the EIS, which will contain the following information:
- (i) a complete and clear description of the purpose and need for the proposed project and objectives;
- (ii) a balanced description of each alternative considered by the applicant. The descriptions will include the size and location of the facilities and pipelines, land requirements, operation and maintenance requirements, and construction schedules. The alternative of no action will be discussed and the applicant's preferred alternative(s) will be identified. Alternatives that were eliminated from detailed examination will be presented with the reasons for their elimination;
- (iii) a description of the alternatives available to the board including:
- (I) providing financial assistance to the proposed project;
- (II) requiring that the proposed project be modified prior to providing financial assistance to reduce adverse environmental impacts, or providing assistance with conditions requiring the implementation of mitigative measures; and
- (III) providing no financial assistance;
- (iv) a description of the alternatives available to other local, state, and federal agencies which may have the ability to issue or deny a permit, provide financial assistance, or otherwise effect or have an interest in any of the alternatives; and
- (v) a description of the affected environment and environmental consequences of each alternative. The affected environment on which the evaluation of each alternative will be based includes, as a partial listing, hydrology, geology, air quality, noise, biology, socioeconomics, land use, and cultural resources of the planning area. The executive administrator will provide guidance, as necessary, to the applicant regarding the evaluation of the affected environment. The discussion will present the total impacts of each alternative in a manner that will facilitate comparison. The effects of the no action alternative must be included to serve as a baseline for comparison of the adverse and beneficial impacts of the other alternatives. A description of the existing environment will be included in the no action section to provide background information. The detail in which the affected environment is described will be commensurate with the complexity of the situation and the significance of the anticipated impacts.
- (4) The draft EIS will be provided to all local, state and federal agencies and public groups with an interest in the proposed project and be made available to the public for review. The final EIS will include all objections and suggestions made before and during the draft EIS review process, along with the issues of public concern expressed by individuals or interested groups. The final EIS must include discussions of any such comments pertinent to the project or the EIS. All commentors will be identified. If a comment has led to a change in either the project or the

EIS, the reason should be given. The board's staff will always endeavor to resolve any conflicts that may have arisen, particularly among permitting agencies, prior to the issuance of the final EIS. In all cases, the comment period will be no less than 45 days.

- (5) Material incorporated into an EIS by reference will be organized to the extent possible into a supplemental information document and be made available for public review upon request. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the comment periods specified in subsection (b)(4) of this section.
 - (6) Preparation of the EIS will be done, at the discretion of the executive administrator: directly by its own staff; by consultants to the board; or by a consultant, contracted by the applicant subject to approval by the executive administrator. In the latter two cases, the consultants will be required to execute a disclosure statement prepared by the executive administrator signifying they have no financial or other conflicting interest in the outcome of the project. When an EIS is prepared by contractors, either in the service of the applicant or the board, the executive administrator will independently evaluate the EIS prior to issuance of the ROD and take responsibility for its scope and contents. The board staff who undertake this evaluation will be identified under the list of preparers along with those of the contractor and any other parties responsible for the content of the EIS.
 - (7) The following public participation requirements are the minimum allowable to the applicant and the board.
 - (A) Upon making the determination that an EIS will be required of a proposed project, the executive administrator will publish in the Texas Register and distribute a notice of intent to prepare an EIS.
 - (B) As soon as possible after the notice of intent has been issued, the executive administrator will convene a meeting of the affected federal, state, and local agencies, the applicant, and other interested parties to determine the scope of the EIS. A notice of this scoping meeting may be incorporated into the notice of intent or prepared and issued separately. In no case will the notification period be less than 45 days. As part of the scoping meeting the board will, at a minimum:
 - (i) determine the significance of issues and the scope of those significant issues to be analyzed in depth in the EIS;
 - (ii) identify the preliminary range of alternatives to be considered;
 - (iii) identify potential cooperating agencies and determine the information or analyses that may be needed from cooperating agencies or other parties;
 - (iv) discuss the method for EIS preparation and the public participation strategy;
 - (v) identify consultation requirements of other laws and regulations; and
 - (vi) determine the relationship between the preparation of the EIS and the completion of the engineering feasibility data and any necessary arrangements for coordination of the preparation of both documents.
 - (C) Following the scoping process, the executive administrator will begin the identification and evaluation of all potentially viable alternatives to adequately address the range of issues developed in the scoping. A summary of this, including a list of the significant issues identified, will be provided to the applicant and other interested parties.
 - (D) The draft EIS will be the subject of a formal public hearing and any other public participation activities determined to be appropriate during the scoping process. Both the draft EIS and final EIS will be distributed and made available for public review in a fashion consistent with the requirements of subsection (b)(2)(B) of this section except that the advertisement period for the public hearing and comment periods for the draft EIS and final EIS will be no less than 45 days. The executive administrator will publish, in the Texas Register and a newspaper(s) of general circulation in the project area, a notice of availability of the EIS giving locations at which it will be available for public review at least 45 days prior to making any environmental determination.
- (c) Environmental review.
- (1) When the executive administrator has determined that an applicant's proposed project may be excluded from a formal environmental review or has determined that a CE is to be rescinded, the executive administrator will prepare a public notice of the determination and the availability of supporting documentation for public inspection. The notice will be published in a local newspaper of community-wide circulation by the applicant. The executive administrator, concurrent with the publication, will distribute the notice to all interested parties.
 - (2) An environmental review of the proposed project, supported by the applicant's EID, will be conducted by the executive administrator to determine whether any significant impacts are anticipated and whether any changes may be made in the proposed project to eliminate significant adverse impacts. As part of this review, the executive administrator may require the applicant to submit additional information or undertake additional public participation

and coordination to support the environmental determination. Based on the environmental review, the executive administrator will prepare an EA, describing:

- (A) the purpose and need for the proposed project;
- (B) the proposed project, including its costs;
- (C) the alternatives considered and the reasons for their rejection or acceptance;
- (D) the existing environment;
- (E) any potential adverse impacts and mitigative measures; and
- (F) any proposed conditions to the provision of financial assistance and any means provided for the monitoring of compliance with the conditions.

(3) Based upon this EA, the executive administrator will issue a FNSI or issue a notice of intent to prepare an EIS. The FNSI will include a brief description of the proposed project, its costs, any mitigative measures proposed for the applicant as a condition of its receipt of financial assistance, and a statement to the effect that comments supporting or disagreeing with the FNSI may be submitted for consideration by the board. The EA will be attached to the FNSI when mitigative measures are specified by conditions of the financial assistance. The FNSI will be distributed to all parties, governmental entities, and agencies that may have an interest in the proposed project. No action regarding approval of the engineering feasibility data will be taken by the executive administrator for at least 30 days after the issuance of the FNSI. Additionally, except for projects utilizing the pre-design option under §375.39 of this title (relating to Pre-Design Funding Option), no funds for building will be released for at least 30 days after the issuance of the FNSI. For projects utilizing the pre-design option, approval of the release of funds for planning will be made prior to the issuance of the FNSI, but no approval for release of funds for design or building will be made until at least 30 days after the issuance of the FNSI.

(4) Except for projects utilizing pre-design funding under §375.39 of this title (relating to Pre-Design Funding Option), the executive administrator will prepare a concise public ROD following the public hearing on the draft EIS and the comment period on the final EIS and before the decision to approve the CWSRF engineering plan or to provide or deny financial assistance to the proposed project. The ROD will describe those mitigative measures to be taken which will make the selected alternative environmentally acceptable. For projects utilizing the pre-design funding option under §375.39 of this title (relating to Pre-Design Funding Option), the ROD shall be made prior to the board's approval of the release of funds for design.

(d) Application of other laws and authorities. In addition to the requirements of state law and rules, the Act, and the NEPA, the board must, as required by the initial guidance for the state water pollution control revolving fund and the capitalization grant agreement, insure that each project proposed to receive CWSRF financial assistance complies with the following federal laws and authorities respecting the human environment: the Archeological and Historic Preservation Act of 1974, Public Law 93-191; the Historic Sites Act; the Clean Air Act, 42 United States Code 7506(c); the Coastal Barrier Resources Act, 16 United States Code 3501 et seq., the Coastal Zone Management Act of 1972, Public Law 92-583, as amended; the Endangered Species Act, 16 United States Code 1531 et seq.; Executive Order 11953, Protection and Enhancement of the Cultural Environment; Executive Order 11988, Floodplain Management; the Flood Disaster Protection Act of 1973, Public Law 93-234; Executive Order 11990, Protection of Wetlands; the Farmland Protection Policy Act, 7 United States Code 4201 et seq.; the Fish and Wildlife Coordination Act, Public Law 85-624, as amended; the National Historic Preservation Act of 1966, Public Law 89-665, as amended; the Safe Drinking Water Act, §1424(e), Public Law 92-523, as amended; and the Wild and Scenic Rivers Act, Public Law 90-542, as amended. Because particular federal and/or state agencies are charged with the enforcement of or permitting under many of these laws and authorities, the executive administrator will provide guidance to applicants to the fund regarding consultation requirements and will encourage proper coordination of project planning with the appropriate agencies. Because of their complexity and critical importance to the board's administration of the fund, the board has adopted the following sections to effect proper compliance with the requirements of the Flood Disaster Protection Act of 1973, the Coastal Barrier Resources Act, and Executive Order 11988, Floodplain Management.

- (1) The board will not provide financial assistance from the CWSRF for any project element that is proposed to be constructed in a floodplain when the applicant's community is sanctioned by the Federal Emergency Management Agency (FEMA) in its administration of the National Flood Insurance Program, pursuant to the requirements of the Flood Disaster Protection Act of 1973, Public Law 93-234.
- (2) The board will not provide financial assistance from the fund to any entity proposing construction in or extension or expansion of sewerage service into any area within the Coastal Barrier Resources System other than those permitted by the Coastal Barrier Resources Act, 16 United States Code 3501 et seq.
- (3) Pursuant to the requirements of Executive Order 11988, the board will avoid direct and indirect support of development in floodplains wherever there is a practicable alternative. Therefore, both to preserve the significant natural functions and values of floodplains and to protect human health and safety.

- (A) The board may provide financial assistance from the fund for the transportation or treatment of wastewater generated in a floodplain only when the proposed project will provide service to:
- (i) areas of existing development in a floodplain;
 - (ii) facilities such as marinas which, by their nature, must be located in floodplains;
 - (iii) areas of projected growth if an EID demonstrates that the proposed development will be consistent with FEMA's floodplain management criteria for flood prone areas (44 Code of Federal Regulations 60.3) and will have no significant impacts on natural functions and values of floodplains; and
 - (iv) areas of projected growth if an EIS demonstrates that there is no practicable alternative to such growth, that such growth will be consistent with the floodplain management criteria cited in clause (iii) of this subparagraph and that the benefits of such growth outweigh its costs to the natural functions and values of the effected floodplains or risks to human health and safety.
- (B) When regional systems are proposed, the board will require the regional authority and the member entities to demonstrate compliance with these rules.
- (C) For the purposes of this subsection, the following definitions will apply:
- (i) Areas of existing development. All or part of the project planning area which, at the time of the board's issuance of its environmental determination, is:
 - (I) occupied by existing structures or facilities;
 - (II) substantially surrounded by existing structures and facilities and which serves no significant independent natural floodplain function; or
 - (III) characterized by substantial investment in public infrastructure (e.g., roads and utilities are available to individual users) but which is only partially occupied by structures or facilities.
 - (ii) Floodplain or 100-year floodplain. Those lowland, relatively flat areas usually adjoining inland or coastal waters that have a 1.0% or greater chance of flooding in any given year. In determining these areas, the applicant will use flood insurance rate maps or flood hazard boundary maps approved by FEMA. Where these maps are unavailable, the applicant should produce its own map(s) delineating the 100-year floodplain and showing 100-year flood elevations. Such maps should be prepared in accordance with FEMA's Guidelines and Specifications for Study Contractors.
 - (iii) Functions and values. Natural functions and values of the floodplain include:
 - (I) maintenance of water quality;
 - (II) transport, storage, and absorption of floodwaters;
 - (III) groundwater recharge;
 - (IV) flow of debris;
 - (V) wildlife habitat;
 - (VI) cultural and historical resource repository;
 - (VII) agricultural resources; and
 - (VIII) aesthetic resources.
- (D) The board will, as appropriate and consistent with the requirements of these rules and Executive Order 11988, Floodplain Management, require assurances or include conditions to the provision of CWSRF financial assistance to insure compliance with these rules.

Adopted effective February 11, 1999

Amended effective October 10, 2001

DIVISION 3. PREREQUISITES TO RELEASE OF FUNDS
Texas Administrative Code Sections 375.221 - 375.222

These rules are adopted under the authority of Texas Water Code, Section 6.101, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.221. Pre-Design Funding Option.

- (a) This loan application option will provide an applicant that meets all applicable board requirements an alternative to secure a commitment and close a loan for planning, design or building costs associated with a project. Under this option, a loan may be closed and funds necessary to complete planning and design activities released. If planning requirements have not been satisfied, design and building funds will be escrowed and released in the sequence described in this section. After planning

and environmental review, the board may require the applicant to make changes in order to receive the board's approval and proceed with the project. If the portion of a project associated with funds in escrow cannot proceed, the loan recipient shall use the escrowed funds to redeem bonds purchased by the board in inverse order of maturity.

- (b) The executive administrator may recommend to the board the use of this section if, based on available information, there appear to be no significant permitting, social, environmental, engineering, or financial issues associated with the project. An application for pre-design funding may be considered by the board despite a negative recommendation from the executive administrator.
- (c) Applications for pre-design funding must include the following information:
- (1) for loans including building cost, an engineering plan of study which will include at minimum: a description and purpose of the project; area maps or drawings as necessary to fully locate the project area(s); a proposed project schedule; estimated project costs and budget including sources of funds; current and future populations and projected flows; alternatives considered; and a discussion of known permitting, social or environmental issues which may affect the alternatives considered and the implementation of the proposed project;
 - (2) contracts for engineering services;
 - (3) evidence that an approved water conservation plan as required under §375.37 of this title (relating to Required Water Conservation Plan) will be adopted prior to the release of loan funds or the applicant's election to submit the water conservation plan under §375.37(b) of this title.
 - (4) all information required in §§375.32, 375.33, and 375.34 of this title (relating to Required General Information, Required Legal Information, and Required Fiscal Information); and
 - (5) any additional information the executive administrator may request to complete evaluation of the application.
- (d) After board commitment and completion of all closing and release prerequisites as specified in §375.71 of this title and §375.72 of this title (relating to Release of Funds), funds will be released in the following sequence:
- (1) for planning and permitting costs, after receipt of executed contracts for the planning or permitting phase, and after approval of a water conservation plan if still outstanding under §375.37(b) of this title;
 - (2) for design costs, after receipt of executed contracts for the design phase and upon approval of the engineering feasibility data as specified in §375.36 of this title (relating to the Engineering Feasibility Data) and compliance with §375.214 of this title (relating to Required Environmental Review and Determination) and after board approval under subsection (e) of this section; and
 - (3) for building costs, after issuance of any applicable permits, and after bid documents are approved and executed construction documents are contingently awarded.
- (e) Board staff will use preliminary environmental data provided by the applicant, as specified in subsection (c)(1) of this section and make a written report to the executive administrator on known or potential significant social or environmental concerns to allow the executive administrator to make a recommendation to the board on pre-design funding. Prior to release of funds for design, these projects must have the board's approval based upon an environmental review conducted during planning under the standards of §375.214 of this title as applicable.
- (f) Prior to the board's approval of release of funds for design, the executive administrator shall summarize the project's environmental review and shall inform the board of any environmentally related special mitigative or precautionary measures recommended for the project. The board may elect to affirm or alter the conditions of the original commitment to the applicant or withdraw the commitment to the applicant.

Adopted effective February 11, 1999

Amended effective November 7, 2000

§375.222. Lending Rates.

- (a) Procedure for setting fixed interest rates.
- (1) The executive administrator will set fixed rates for loans on a date that is:
 - (A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution; and
 - (B) not more than 45 days before the anticipated closing of the loan from the board.
 - (2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.
- (b) Fixed rates. The fixed interest rates for CWSRF loans under this subchapter are set at rates 170 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate index for borrowers derived under paragraph (2) of this subsection. The fixed rate index rates shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis) or the 90 index scale of the Delphis for borrowers with either no rating or a rating less than investment grade, using individual coupon rates for each maturity of proposed debt based

on the appropriate index's scale. The fixed rate index rates shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.

- (1) Under §375.18(c) of this title (relating to Administrative Cost Recovery) an additional 25 basis points reduction will be used, for total fixed interest rates of 195 basis points below the fixed index rates for such borrower.
- (2) For borrowers filing applications on or after September 21, 1997 for loans with an average bond life in excess of 14 years or, at the discretion of the board for borrowers filing applications on or after September 21, 1997 for loans which have debt schedules less than 20 years and which produce a total fixed lending rate reduction in excess of a standard loan structure (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service), the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the total fixed lending rate reduction.
 - (A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate index of the Delphis scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the board for approval.
 - (B) Level debt service will be calculated using the 13th year Delphis Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan which has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan which has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.
 - (C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph (1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.
 - (D) The board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.
- (c) Variable rates. The interest rate for CWSRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the CWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections (a) and (b) of this section.
- (d) Adjustment of rate. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

Adopted effective February 11, 1999

Amended effective May 6, 2003

SUBCHAPTER C. NONPOINT SOURCE POLLUTION CONTROL PROJECT AND ESTUARY MANAGEMENT FINANCIAL ASSISTANCE PROGRAMS

DIVISION 1. INTRODUCTORY PROVISIONS **Texas Administrative Code Sections 375.301 - 375.302**

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and 15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.301. Scope of Subchapter. The provisions of this Subchapter C shall apply to administration of the nonpoint source loan program and the nonpoint source linked deposit program under the Clean Water Pollution Control Revolving Fund established by the Water Code, Chapter 15, Subchapter J. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A (relating to General Provisions) shall apply to this subchapter.

Adopted effective July 6, 2004

§375.302. Definitions of Terms. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) **BMP** -- Best management practices are those practices determined to be the most efficient, practical, and cost-effective measures identified to guide a particular activity or address a particular problem.

- 2) Eligible lending institution -- A financial institution that makes commercial loans, is either a designated as a depository of state funds by the Texas comptroller of public accounts, herein referred to as a state depository, or an institution of the Farm Credit System headquartered in this state, agrees to participate in a linked deposit program established under Water Code §15.611, and is willing to agree to provide collateral equal to the amount of linked deposits placed with it.
- (3) Individual Water Quality Management Plan -- An approved land management plan which considers site-specific characteristics (such as soil types, slope, climate, vegetation and land usage) to improve or conserve water resources.
- (4) Linked Deposit -- A deposit governed by a linked deposit agreement between the board and an eligible lending institution that requires that:
 - (A) the eligible lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;
 - (B) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this division; and
 - (C) the eligible lending institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent;
- (5) Linked Deposit Agreement -- A written agreement between the board, acting through the executive administrator, and an eligible lending institution providing for the deposit by the board of an amount of funds from the CWSRF program account with the eligible lending institution executed pursuant to the authority and according to the conditions of this subchapter.
- (6) National Estuary Program -- Program created by the Water Quality Act of 1987 and administered according to Section 320 of the Act.
- (7) NPS Loan Program -- Nonpoint Source Pollution Loan Program, the loan program established in Division 2 of this subchapter to provide low interest loans to persons for the implementation of approved nonpoint source pollution control and abatement projects and estuary management projects.
- (8) NPS Management Report -- The most recent Texas Nonpoint Source Pollution Assessment Report and Management Program adopted by the commission.
- (9) Person -- An individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or any interstate body, as defined by Section 502 of the Act, including a political subdivision as defined by Water Code §15.602(9), if the person is eligible for financial assistance under federal law establishing the revolving fund.

DIVISION 2. NONPOINT SOURCE POLLUTION LOAN AND ESTUARY MANAGEMENT PROGRAM
Texas Administrative Code Sections 375.325 - 375.329

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and 15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.325. Purpose. This division implements the Texas Water Code, Chapter 15, Subchapter J related to providing financial assistance to persons for nonpoint source pollution control and abatement projects and estuary management projects.
 Adopted effective July 6, 2004

§375.326. Eligible Projects. Projects eligible for funding from the NPS Loan Program must be:

- (1) an identified practice within a Water Quality Management Plan; or
- (2) a nonpoint source management activity that has been identified in the Texas Comprehensive Groundwater Protection Program; or
- (3) a BMP listed in the NPS Management Report; and
- (4) must be consistent with the EPA approved Nonpoint Source Management Plan or the National Estuary Program efforts.

Adopted effective July 6, 2004

§375.327. Application for Assistance. An applicant for financial assistance for a nonpoint source or estuary protection project pursuant to this subchapter shall submit an application in the form and number prescribed by the executive administrator. The executive administrator may request any additional information needed to evaluate the application, and may return any incomplete application.
 Adopted effective July 6, 2004

§375.328. Promissory Notes and Loan Agreements.

- (1) The board may provide financial assistance to applicants by either purchasing bonds issued by such applicant or by receiving a promissory note and entering into a loan agreement with such applicant. If, however, an applicant is a governmental entity

- that is fully authorized to issue bonds, the applicant may not enter into a loan agreement as provided in this section.
- (b) If an applicant executes a promissory note and loan agreement with the board, the executive administrator may waive the hiring or employment of a financial advisor required pursuant to these rules.

Adopted effective July 6, 2004

§375.329. Lending Rates. The interest rate for applicants receiving funding pursuant to this subchapter will be the 140% of the rate pursuant to §375.52 of this title (relating to Lending Rates).

Adopted effective July 6, 2004

DIVISION 3. NONPOINT SOURCE POLLUTION LINK DEPOSIT PROGRAM **Texas Administrative Code Sections 375.350 - 375.357**

These rules are adopted under the authority of Texas Water Code, Sections 6.101 and 15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code.

§375.350. Purpose. This division implements Texas Water Code, Chapter 15, Subchapter J related to the use of the CWSRF for the purpose of providing linked deposits to eligible lending institutions for loans to persons for nonpoint source pollution control projects.

Adopted effective July 6, 2004

§375.351. Authorization to Execute Agreements. The board authorizes the executive administrator to execute a linked deposit agreement with an eligible lending institution to provide funds from the CWSRF program account according to and in compliance with this division. The linked deposit agreement shall include the obligations set forth in this division and such other terms and conditions determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this subchapter.

Adopted effective July 6, 2004

§375.352. Conditions Prior to Execution.

- (a) Before the executive administrator may execute a linked deposit agreement, a lending institution shall submit to the executive administrator:
- (1) the application of a person determined by the eligible lending institution to be eligible and creditworthy to receive a loan according the criteria of the institution;
 - (2) a draft loan agreement with such person that:
 - (A) identifies the principal amount of the loan which shall not exceed \$250,000;
 - (B) identifies the interest rate to be paid by the borrower which shall not exceed the interest rate paid by the eligible lending institution to the board plus four percent;
 - (C) includes a repayment schedule which identifies the dates on which payments are due from the loan recipient to the lending institution;
 - (D) limits the use of the loan funds to the project which is certified pursuant to either §375.353(a) or (b) of this division; and
 - (E) contains all such other terms and conditions determined by the eligible lending institution in its sole discretion to be reasonable for the purposes of a private loan agreement;
 - (3) a certification:
 - (A) from the eligible lending institution of the interest rate applicable to the proposed loan;
 - (B) for proposed project as identified by either §375.353(a) or (b) of this division; and
 - (4) such other information or documentation as determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this division.
- (b) Before the executive administrator executes a linked deposit agreement, the executive administrator shall review the information submitted in this section and determine that:
- (1) the lending institution is an eligible lending institution as defined §375.302 of this subchapter;
 - (2) the documents submitted by the lending institution comply with the requirements of this division; and
 - (3) execution of the linked deposit agreement fulfills the purposes and intent of this subchapter, the Clean Water Act, and the public interest.

Adopted effective July 6, 2004

§375.353. Project Certifications.

- (a) If the proposed project is an agricultural or silvicultural nonpoint source pollution control project, in order to be eligible to

receive a linked deposit a director of a soil and water conservation district for the district in which the project is located must certify that:

- (1) the loan recipient has a water quality management plan certified by the State Soil and Water Conservation Board; and
 - (2) the project furthers or implements such plan.
- (b) For all projects that are not an agricultural or silvicultural nonpoint source pollution control project, in order to be eligible to receive a linked deposit the executive director must certify that the loan recipient's proposed project implements the NPS Management Report.

Adopted effective July 6, 2004

§375.354. Board Obligations in Linked Deposit Agreements.

- (a) Upon execution of a linked deposit agreement by the executive administrator and an eligible lending institution, the board, acting through its executive administrator, shall:
- (1) deposit with the lending institution the amount of funds identified in the linked deposit agreement from the CWSRF program account; and
 - (2) perform such other terms and conditions as specified in the linked deposit agreement.
- (b) The board or the executive administrator may withdraw linked deposits from the lending institution according to the terms of the linked deposit agreement or if the institution ceases to be either a state depository or a Farm Credit System institution headquartered in Texas.

Adopted effective July 6, 2004

§375.355. Lending Institution Obligations in Linked Deposit Agreements.

- (a) Upon execution of a linked deposit agreement and receipt of funds from the board, the lending institution shall:
- (1) provide collateral equal to the amount of the funds from the CWSRF program account placed on deposit with it;
 - (2) lend the value of the deposit being provided by the board substantially according to the terms and conditions of the draft loan agreement submitted by the lending institution to the executive administrator;
 - (3) pay to the board interest on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;
 - (4) submit compliance reports to the executive administrator annually providing information on loans made, the performance of the terms of the loan by the person receiving the loan from the lending institution and such other information or documents as specified in the linked deposit agreement;
 - (5) return the amount of funds provided as a linked deposit as specified in the linked deposit agreement; and
 - (6) perform such other terms and conditions as specified in the linked deposit agreement, this subchapter, the rules of the board, and applicable federal and state law.
- (b) A delay in payment or a default on a loan by the recipient of the loan from the lending institution does not affect the validity of the deposit agreement or the repayment of the deposit in accordance with the terms of the deposit agreement.

Adopted effective July 6, 2004

§375.356. Requirements after Execution. After the executive administrator has executed a linked deposit agreement, the executive administrator shall:

- (1) at the next available board meeting and each month thereafter, provide a report to the board that:
 - (A) identifies all linked deposit agreements; and
 - (B) the status of the loans made by lending institutions; and
- (2) in the event of noncompliance on the part of an eligible lending institution, inform the Texas comptroller of public accounts of the noncompliance and include information regarding the noncompliance in the monthly report to the board.

Adopted effective July 6, 2004

§375.357. State Liability. The state is not liable to an eligible lending institution for payment of the principal, interest, or any late charges on a loan made to an approved applicant. A linked deposit is not an extension of the state's credit within the meaning of any state constitutional prohibition.

Adopted effective July 6, 2004

ATTACHMENT B

Sources and Uses of Funds

ATTACHMENT B
Sources and Uses of Funds

TEXAS
CLEAN WATER STATE REVOLVING FUND
Statement of Sources and Uses of Capital For Loans & Debt Service
For FY 2006

SOURCES:

Unencumbered Fund Balances (Estimated) for EOY FY 2005	\$	260,559,448
Encumbered Fund Balances (Estimated) for EOY FY 2005		172,782,644
Federal Cap Grant Draw Downs (Est ACH Draws in FY 2006)		49,749,600
State Match To Be Drawn in to Fund in FY 2006		9,949,920
Leveraged Bond Proceeds (Net for Loans) (Est FY 2006 Issuance)		264,170,233
Loan Repayments Principal (Scheduled in FY 2006)		70,760,000
Loan Repayments Interest (Scheduled in FY 2006)		89,764,754
Cash Management Earnings (Estimated For FY 2006) At Est Rate of 2.95%		<u>14,251,205</u>

Total Sources	\$	<u>931,987,804</u>
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USES

Loans	\$	484,394,507
Sr Lien (Leverage) Bonds Debt Service		88,406,950
Variable Rate (Leverage Bonds) Debt Service		7,344,678
Match Bond Debt Service		<u>20,089,939</u>

Total Uses	\$	<u>600,236,074</u>
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Estimated Ending Balances at 08/31/2006	\$	331,751,730
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Portion of EOY Balance Which are Restricted (Encumbered) :

Restricted Reserve Funds (NOT TO BE USED)	\$	122,358,928
Balances In I& S Funds (Estimate)	\$	28,283,953
Temporarily Restricted Collections (NOT TO BE USED)	\$	20,724,873
Reserve For IRS Rebate (Arb Earnings)	\$	<u>1,414,889</u>

Total EOY Balance Which are Restricted (Encumbered) :	\$	<u>172,782,644</u>
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Unencumbered Fund balance to Carry to FY 2007	\$	158,969,086
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Estimated Commitments at 08/31/2006	\$	342,815,000
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Estimated ACH Balance at 08/31/2006*	\$	113,541,325
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*Based on capitalization grants through FY 2005

**Sources and Uses of Fees Collected
(Outside of the SRF Program)**

SOURCES:

Administrative Cost Recovery Fund (Restricted) Projected For 08/31/2005	\$ 5,745,195
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Total Sources	\$ 5,745,195
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USES:

Administrative Budget For FY 2006	\$ 6,105,000
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Total Uses	\$ 6,105,000
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Net Balance	\$ (359,805)
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ATTACHMENT C

FY 2006 Funds Allocated by Category

ATTACHMENT 2
FY 2006 Funds Allocated to Oregon

FY 2006 Funds Allocated by Population Category

Available funds are allocated to the project categories on the basis of each category's percentage of the total costs submitted. Because Board rules provide for a minimum of 7% of the available funds to be allocated to Categories A through F, the allocation of funds involves these steps:

1. The ratio of each category's costs to the total for all categories is calculated

Population Categories		Total Number of Eligible Projects by Category	Total Cost of All Categories	Category Percentage of Total Cost	Categories Receiving Fixed Shares of Available Funds
A	3,000 or fewer	24	\$90,920,000	19.19%	\$0
B	3,001 to 10,000	14	\$142,931,750	30.16%	\$0
C	10,001 to 25,000	10	\$99,183,000	20.93%	\$0
D	25,001 to 100,000	2	\$34,145,000	7.21%	\$0
E	100,001 to 500,000	0	\$0	0.00%	\$0
F	500,001 or greater	9	\$106,660,000	22.51%	\$0
H	Non-Point Source Projects	0		0.00%	\$0
Total of All Categories		59	\$473,839,750	100.00%	\$0

2. Categories having >7% of total costs are totaled. The ratio of each of these categories to the total for all is then calculated.

Population Categories		Total Number of Eligible Projects by Category	Categories >7% of Costs	[These percentages will be applied to the available funds less the amounts for categories with fixed shares]	Available Funds of \$369,300,000 less Fixed Shares (\$4,475,000)
A	3,000 or fewer	24	\$90,920,000	19.19%	
B	3,001 to 10,000	14	\$142,931,750	30.16%	
C	10,001 to 25,000	10	\$99,183,000	20.93%	
D	25,001 to 100,000	2	\$34,145,000	7.21%	
E	100,001 to 500,000	0	\$0	0.00%	
F	500,001 or greater	9	\$106,660,000	22.51%	
H	Non-Point Source Projects	0	\$0	0.00%	
Total of All Categories		59	\$473,839,750	100.00%	\$0

Allocation of FY 2006 Funds

Population Categories		Total Number of Eligible Projects by Category	Available Funds By Category
A	3,000 or fewer	24	\$90,920,000
B	3,001 to 10,000	14	\$142,931,750
C	10,001 to 25,000	10	\$99,183,000
D	25,001 to 100,000	2	\$34,145,000
E	100,001 to 500,000	0	\$0
F	500,001 or greater	9	\$106,660,000
H	Non-Point Source Projects	0	\$0
Total of All Categories		59	\$473,839,750

17 2000 Funds - State & Local Government

A detailed description of the fund is provided in the notes to the financial statements. The fund is established to account for the operations of the State and Local Government.

Category	Number of Projects	Total Amount	Percentage of Total
Non-Project	1	\$100,000	100%
Project	0	\$0	0%
Total of All Categories	1	\$100,000	100%

Categories having a total amount included in the fund are as follows:

Category	Number of Projects	Total Amount	Percentage of Total
A: 1,000 or fewer	1	\$100,000	100%
B: 1,001 to 10,000	0	\$0	0%
C: 10,001 to 25,000	0	\$0	0%
D: 25,001 to 100,000	0	\$0	0%
E: 100,001 to 200,000	0	\$0	0%
F: 200,001 or greater	0	\$0	0%
Non-Project Source	1	\$100,000	100%
Total of All Categories	1	\$100,000	100%

Allocation of Funds by State

Category	Number of Projects	Total Amount	Percentage of Total
A: 1,000 or fewer	1	\$100,000	100%
B: 1,001 to 10,000	0	\$0	0%
C: 10,001 to 25,000	0	\$0	0%
D: 25,001 to 100,000	0	\$0	0%
E: 100,001 to 200,000	0	\$0	0%
F: 200,001 or greater	0	\$0	0%
Non-Project Source	1	\$100,000	100%
Total of All Categories	1	\$100,000	100%