

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
BOND FINANCING PROGRAM**

Meeting Date: May 26, 2010

Request for Final Resolution and

Request for Tax-Exempt Bond Allocation Approval

Prepared by: *Doreen Smith*

Applicant: San Jose Water Company	Amount Requested: \$50,000,000
Project	Application No.: 00833 (SB)
Location: Santa Clara County	Final Resolution No.: 501
	Prior Actions: IR 10-04 approved 03-24-10

Summary. San Jose Water Company requests approval of a Final Resolution for an amount not to exceed \$50,000,000 to finance improvements to its water supply system structures and facilities, distribution system and the acquisition of equipment. The Company provides services in Santa Clara County. The Company anticipates that the project will provide improvement in water quality and recycling benefits.

Borrower. The Company incorporated in California in 1866 and provides water utilities in the County of Santa Clara. The Company is 100% owned by SJW Corporation.

Legal Questionnaire. Staff has reviewed the Company's responses to the questions contained in the Legal Status portion of the Application. Between June 22, 2006 and August 2, 2006, three purported shareholder derivative actions were filed naming an entity which is unrelated to the Company and a number of such entity's current and former officers and directors as defendants. One of such defendants happens to also be a Board member of the Company. The court granted final approval of the settlement by written order on August 12, 2009. No information was disclosed that raises questions concerning the financial viability or legal integrity of this applicant.

TEFRA. The TEFRA hearing was held on April 22, 2010. There were no comments received in support of or in opposition to this Project.

Prior Financings. None.

Project Description. The Company's principal business is the production, purchase, storage, purification, distribution and retail sale of water through a water supply system consisting of two surface water treatment plants located in Los Gatos and Saratoga, 108 active wells, five impounding reservoirs, and over 2,400 miles of transmission and distribution mains located throughout Santa Clara County.

To the extent it will prevent the pollution of drinking water or improve the quality of water, the project will consist of the following:

- Improvements to the structures and facilities that are integral to the supply of water throughout the water supply system, including the treatment plants, wells, reservoirs,

motor control center, tanks, pump stations and other functionally related structures and facilities;

- Improvements to the distribution system, including construction of new mains and replacement of existing mains;
- Replace hydrants, meters and service installation, facility retirements, and customer information system; and
- The acquisition of equipment for the water supply system, located in portions of the Cities of San Jose, Santa Clara, Campbell, Cupertino, Los Gatos, Monte Sereno, and Saratoga and in the contiguous area in Santa Clara county.

The anticipated Project and issuance costs are listed below:

Mains and pipes replacements – replace distribution mains and tie-in with Ductile Iron Cement Lined mains, and design in recycling water mains	\$27,500,000
Replace wells, storage tanks, reservoir, motor control center, pump motors, various water treatment equipment and pump stations	13,400,000
Replace hydrants, meters and service installation, facility retirements, and customer information system	8,100,000
Bond Issuance Expenses	<u>1,000,000</u>
Total:	<u>\$50,000,000</u>

Note: The Project costs reported in the Borrower’s application and shown here in staff’s report are estimated costs. At the time this financing closes, the estimated Project costs will be finalized and stated in the Tax Certificate. Variations from the costs shown in the application and in this report may occur prior to the closing due to increased costs of certain components of the Project from original estimates, and other reasons. In addition, such costs may vary after closing due also to increased costs, as well as common design and equipment modifications during construction, differences in equipment due to future changes in law or regulation or for other reasons. However, the Borrower confirms, through submission of a signed application and will confirm through covenants and representations in various bond documents, that all assets purchased with bond proceeds will qualify for tax exempt financing, that they will be used to complete the Project as described, and that the average life tests required by federal law and described in the Tax Certificate will continue to be met. Tax-exempt financing may be only one source out of multiple sources of financing for a given project.

Local Government. Letters of Support were received from the following government representatives:

- Rami Kahlon, Director – Public Utilities Commission
- Ed Shikada, Chief Deputy City Manager – City of San Jose
- Daniel Rich, City Manager – City of Campbell
- Kathleen M. King, Mayor – City of Saratoga
- Brian Loventhal, City Manager – City of Monte Sereno
- Greg Larson, Town Manger – Town of Los Gatos
- Ken Yeager, President, Board of Supervisors – County of Santa Clara

Pollution Control and/or Environmental Benefits. The Company represents the Project will generate the pollution control and environmental benefits described below.

Water Quality. The Company plans to replace steel and cast iron mains with Ductile Iron Cement Lined mains. This can help improve water quality by reducing the occurrence of

pipeline tuberculation in the distribution system. Tuberculation can result in accumulated sediments and rust deposits, which present a potential threat of pollution. Additionally, replacing aged and worn motors and pumps will improve service reliability and water quality for the customers.

Recycling of Commodities. The design, installation and construction of recycled water mains reduces waste and storm drainage.

Permitting and Environmental Approvals.

No discretionary permits and or approvals are required for this project.

Financing Details. The Company anticipates issuance of negotiated tax-exempt, weekly reset, variable rate bonds with a term not to exceed ~~30~~ 40 years for the qualifying portion of the project. ~~The Company plans to secure the bonds with an irrevocable, direct pay Letter of Credit that is rated at least “A” by Standard & Poor’s Rating Agency or equivalent. The bonds have been rated “A” by Standard & Poor’s Rating Agency.~~ The target date for financing is June 16, 2010.

Financing Team.

Underwriter: Goldman Sachs

Bond Counsel: Law Offices of Leslie M. Lava

Issuer’s Counsel: Office of the Attorney General

Staff Recommendation. Staff recommends approval of Final Resolution No. 501 and Volume Cap Allocation Resolution No. 09-136-01 for an amount not to exceed \$50,000,000 for San Jose Water Company.

**FINAL BOND RESOLUTION OF THE
CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
RELATING TO FINANCING OF
WATER FACILITIES AND EQUIPMENT
FOR SAN JOSE WATER COMPANY**

May 26, 2010

WHEREAS, the California Pollution Control Financing Authority (the “Authority”) has received the application of San Jose Water Company (the “Borrower”), for financial assistance to finance (i) improvements to the structures and facilities that are integral to the supply of water throughout the Borrower’s water supply system (the “Water System”), including the replacement of wells, storage tanks, reservoir, motor control center, pump motors, water treatment equipment and pump stations, (ii) improvements to the distribution system, including replacement of existing distribution mains, and (iii) the acquisition of equipment for the Water System, including hydrants, meters and related installation, facility retirements and customer information system, and all as more particularly described in the Term Sheet attached hereto as Exhibit A and incorporated herein (the “Term Sheet”) (collectively, the “Project”); and

WHEREAS, the Borrower has requested the Authority to issue its revenue bonds from time to time in an amount not to exceed \$50,000,000 to assist in the financing of the Project; and

WHEREAS, the proceeds of such revenue bonds will be loaned to the Borrower under a loan agreement with the Authority; and

WHEREAS, final approval of the terms of such revenue bonds and certain documents relating to such revenue bonds is now sought; and

WHEREAS, the Borrower has provided documentation to the Authority demonstrating that the Project has complied with Division 13 (commencing with Section 21000) of the Public Resources Code, or is not a project under that division;

NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. The Project constitutes a “project” and the Borrower is a “participating party” within the meaning of the California Pollution Control Financing Authority Act (the “Act”).

Section 2. Pursuant to the Act, revenue obligations of the Authority, designated as the “California Pollution Control Financing Authority Revenue Bonds (San Jose Water Company Project) Series 2010A” (the “Bonds”), or such alternate designation as may be approved by the Executive Director of the Authority, in an aggregate principal amount not to exceed \$50,000,000, are hereby authorized to be issued. The Bonds may be issued at one time, or from time to time, in one or more series separately or differently identified, and may be issued in a tax-exempt or taxable mode, all in accordance with the Indenture (as hereinafter defined) as

finally executed. The proceeds of the Bonds shall be used to finance the Project and to pay costs of issuance of the Bonds.

Section 3. The Treasurer of the State of California (the “Treasurer”) is hereby authorized to sell the Bonds, at one time or from time to time on or before December 31, 2010, by negotiated sale, in a tax-exempt mode, at such price and at such interest rate or rates as he may determine, such determination to be as set forth in the hereinafter referred to Purchase Contract.

Section 4. The proposed form of loan agreement relating to the Bonds (the “Loan Agreement”), between the Authority and the Borrower, on file with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein as the signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by execution and delivery thereof. The Authority understands and agrees that pursuant to the terms of the Loan Agreement, the obligations of the Borrower may, under some circumstances, be carried out or assumed by a successor or assignee entity, or by an Affiliate of the Borrower. For purposes of this Resolution, an “Affiliate” of the Borrower means any person or entity which meets the definition of “Participating Party” in the Act and controls, is controlled by, or is under common control with, the Borrower, as shown by the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through majority equity ownership, contract or otherwise.

Section 5. The proposed form of indenture relating to the Bonds (the “Indenture”), between the Authority and the trustee named in the Term Sheet (the “Trustee”), on file with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein as the signatory executing the same may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by the execution and delivery thereof. The dates, maturity dates, interest rate or rates, interest payment dates, denominations, forms, registration privileges, place or places of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture, as finally executed.

Section 6. The proposed form of bond purchase contract (the “Purchase Contract”) among the underwriter or underwriters named in the Term Sheet (the “Underwriter”), the Treasurer and the Authority, as agreed to and accepted by the Borrower, on file with the Authority prior to this meeting, is hereby approved in substantially such form, with such insertions, deletions or changes therein as the signatory executing the same, may require or approve, and with particular information inserted therein in substantial conformance with the Term Sheet, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 7. The proposed form of the preliminary official statement relating to the Bonds (the “Preliminary Official Statement”), on file with the Authority prior to this meeting, is hereby approved in substantially such form, with such changes and insertions therein as the Executive Director may require or approve. The Underwriters are hereby authorized to distribute the Preliminary Official Statement to persons who may be interested in the purchase of the Bonds. The Authority hereby approves a final official statement for the Bonds authorized herein, in substantially the form of the Preliminary Official Statement, with such insertions and changes therein as the signatory executing the same may require or approve, such approval to be

conclusively evidenced by the execution and delivery thereof. The Underwriters are hereby directed to deliver a copy of said final official statement (as finally executed, the “Official Statement”) to all actual purchasers of the Bonds.

Section 8. The Bonds, when executed, shall be delivered to the Trustee under the Indenture for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate each series of Bonds by executing the Trustee’s certificate of authentication appearing thereon. The Trustee is hereby requested and directed to deliver the Bonds, when duly executed and authenticated, to The Depository Trust Company, New York, New York, on behalf of the Underwriter in accordance with written instructions executed on behalf of the Authority, which instructions are hereby approved. Such instructions shall provide for the delivery of the Bonds to The Depository Trust Company, on behalf of the Underwriter thereof, upon payment of the purchase price thereof.

Section 9. The Authority hereby dedicates and confirms its allocation to the Bonds issued in a tax-exempt mode (the “Tax-Exempt Bonds”) of a portion of its private activity bond limit, as previously received, carried forward or to be received from the California Debt Limit Allocation Committee, in an amount up to the applicable principal amount of Tax-Exempt Bonds issued and delivered to finance certain costs of the Project and to pay certain costs of issuance of the Tax-Exempt Bonds, so as to satisfy the requirements of Section 146(e) of the Internal Revenue Code of 1986, with respect to the Tax-Exempt Bonds.

Section 10. Each officer of the Authority, acting alone, is hereby authorized and directed, acting alone, to do any and all ministerial acts that they may deem necessary or advisable in order to consummate the issuance, sale or delivery of the Bonds, and otherwise to effectuate the purposes of this Resolution and the Indenture, the Loan Agreement, the Bond Purchase Contract and the Official Statement. The Authority hereby approves any and all documents to be delivered in furtherance of the foregoing purposes, including without limitation, any certifications, including, a tax certificate.

Section 11. The provisions of the resolution of the Authority entitled “Resolution of the California Pollution Control Financing Authority Delegating Certain Powers and Authorizing Certain Actions Related to Bond Financings” adopted by the Authority on January 27, 2010 (the “Delegation Resolution”) apply to the documents and actions approved in this Resolution, and the provisions of the Delegation Resolution are incorporated herein by reference, unless there shall be adopted by the Authority on the date hereof a resolution of the same name, in which case it shall mean such resolution.

Section 12. The Authority hereby approves and ratifies each and every action taken by its officers, agents, members and employees prior to the date hereof in furtherance of the purposes of this Resolution.

Section 13. This Resolution shall take effect immediately upon its passage. The adoption by the Authority of this Resolution for the Borrower shall not be referred to in any application before any government agency as evidence of the feasibility, practicality or suitability of the Project or in any application for any required permission or authority to construct or operate the Project.

EXHIBIT A

TERM SHEET

Name of Issue: California Pollution Control Financing Authority Revenue Bonds (San Jose Water Company Project) Series 2010A (the “Bonds”)

Maximum Amount of Issue: \$50,000,000 (tax-exempt)

Issuer: California Pollution Control Financing Authority (the “Authority”) Sacramento, CA

Borrower: San Jose Water Company

Trustee: Wells Fargo Bank, National Association

Underwriter: Goldman, Sachs & Co.

Bond Counsel: Leslie M. Lava, Esq. Sausalito, CA

Project: To the extent they will prevent the pollution of drinking water or improve the quality of water or ensure the safe handling, recycling, or disposal of materials that might otherwise be improperly disposed of, the project will be comprised of: (i) improvements to the structures and facilities that are integral to the supply of water throughout the water supply system (the “Water System”), including the replacement of wells, storage tanks, reservoir, motor control center, pump motors, water treatment equipment and pump stations, (ii) improvements to the distribution system, including replacement of existing distribution mains, and (iii) the acquisition of equipment for the Water System, including hydrants, meters and related installation, facility retirements and customer information system; all located in one or more of the following

Agenda Item – 4.E.1.

areas: the Borrower’s certificated service area in portions of the cities of San Jose, Santa Clara, Cupertino, Campbell, Saratoga, Monte Sereno and Los Gatos and in the contiguous areas in the county of Santa Clara.

Maximum Bond Term:	Not to exceed 40 years
Type of Sale:	Negotiated sale
Description of Minimum Denominations:	\$5,000 or any integral multiple thereof
Financing Structure:	Unsecured, fixed rate bonds
Maximum Interest Rate:	12%
Letters of Credit:	Not applicable
Other Credit Enhancement:	Not applicable
Anticipated Bond Rating:	“A” (S&P)
Type of Financing:	Water furnishing facilities revenue bonds
Prepared by:	Leslie M. Lava, Esq. Law Offices of Leslie M. Lava (415) 331-6464

THE CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

RESOLUTION NO. 09-136-01

**A RESOLUTION DEDICATING FOR USE OF A PORTION OF THE 2009 STATE
CEILING ON QUALIFIED PRIVATE ACTIVITY BONDS FOR AN
EXEMPT FACILITY PROJECT**

WHEREAS, the California Pollution Control Financing Authority (“CPCFA”) has received an application (“Application”) from San Jose Water Company (“Project Sponsor”) for approval of the issuance of revenue bonds; and

WHEREAS, on May 26, 2010, CPCFA approved Final Resolution No. 501 (“Final Resolution”) authorizing the issuance of up to \$50,000,000 of its water furnishing facilities revenue bonds (San Jose Water Company Project) Series 2010 (“Bonds”); and

WHEREAS, in seeking CPCFA approval of the Final Resolution, the Project Sponsor represented certain facts and information concerning the project to CPCFA which were relied upon by CPCFA in approving the Final Resolution; and

WHEREAS, the California Debt Limit Allocation Committee (“CDLAC”) has previously transferred to CPCFA a portion of the 2009 State Ceiling on Qualified Private Activity Bonds pursuant to Section 146 of the Internal Revenue Code of 1986, as amended, for use by CPCFA to issue bonds or other obligations in a manner consistent with CDLAC’s policies and procedures. Accordingly, capitalized terms not otherwise defined shall have the meanings ascribed to them in the “Procedures of the California Debt Limit Allocation Committee Implementing the Allocation of State Ceiling on Private Activity Bonds” (“CDLAC Procedures”); and

WHEREAS, it is appropriate for CPCFA to confirm the use of a portion of the 2009 State Ceiling on Qualified Private Activity Bonds allocated to CPCFA (“CPCFA Allocation”) to the issuance of the Bonds as set forth in the Final Resolution;

NOW, THEREFORE, CPCFA resolves as follows:

Section 1. CPCFA Allocation in the amount of \$50,000,000 is hereby dedicated to the issuance of the Bonds. The dedicated CPCFA Allocation may be used only by the Project Sponsor and only for the issuance of Bonds for the Project, as specifically described in Exhibit A, and consistent with the terms of the Final Resolution. All of the terms and conditions of Exhibit A, and the Final Resolution are incorporated herein as though set forth in full (this resolution, the Final Resolution and Exhibit A, collectively “Resolution”).

Section 2. The terms and conditions of this Resolution shall be incorporated in appropriate documents relating to the Bonds, and the Project Sponsor and all its respective successors and assignees, will be bound by such terms and conditions.

Section 3. Any modification to the Project made prior to the issuance of the Bonds must be reported to the Executive Director and shall require reconsideration by the CPCFA before the Allocation may be used for the Project.

Section 4. The CPCFA Allocation dedicated by this Resolution shall automatically revert to CPCFA unless the Bonds for the Project have been issued by CPCFA by the close of business on **August 26, 2010**. In a case of extreme hardship, the Executive Director may extend this date by up to five (5) business days.

Section 5. Within twenty-four (24) hours of issuing the Bonds, CPCFA shall notify CDLAC by facsimile communication to the fax number listed in Section 24 of the CDLAC Procedures that the Bonds have been issued. This facsimile notice shall identify the Project Sponsor, the project or program, the date and amount of the Bonds issued.

Section 6. Within fifteen (15) calendar days of the Bond closing, CPCFA or its counsel shall formally transmit to CDLAC information regarding the issuance of the Bonds by submitting a completed Report of Action Taken in a form prescribed by and made available by CDLAC.

Section 7. Any differences between the amount of Bonds issued and the amount of the CPCFA Allocation dedicated in Section 1 of this Resolution shall automatically revert to CPCFA. If at any time prior to the expiration date set forth in Section 7 hereof the Project Sponsor determines that part or all of the CPCFA Allocation dedicated in Section 1 of this Resolution will not be required by the Project by that date, the Project Sponsor shall promptly give notice to CPCFA.

Section 8. In consideration of the CPCFA Allocation dedicated in Section 1 of this resolution, the Project Sponsor shall comply with all of the terms and conditions contained in this Resolution and ensure that these terms and conditions are included in the documents related to the Bonds. Further, the Project Sponsor expressly agrees that the terms and conditions of this Resolution may be enforced by CDLAC or CPCFA through an action for specific performance or any other available remedy, provided however, that CDLAC and CPCFA agree not to take such action or enforce any such remedy that would be materially adverse to the interests of Bondholders. In addition, CPCFA shall ensure that the Bond documents, as appropriate, expressly provide that CDLAC is a third party beneficiary of the terms and conditions set forth in this Resolution.

Section 9. The Project Sponsor or its successor-in-interest shall provide certifications of compliance with the terms and conditions set forth in this Resolution when reasonably requested by CDLAC or CPCFA.

Section 10. This Resolution shall take effect immediately upon its adoption.

RESOLUTION NO. 09-136-01
(AN EXEMPT FACILITY PROJECT)
EXHIBIT A

1. Project Sponsor: San Jose Water Company
2. Application #: 833 (SB)
3. Project User: San Jose Water Company
4. Project Name: San Jose Water Company
5. Location: Santa Clara County
6. Credit Enhancement or Private Placement Purchaser: not applicable
7. The Credit Enhancement Provider/Private Placement Purchaser at the time of issuance will be the same as represented in the application.
8. Amount of Allocation: \$50,000,000