



New York State  
ENVIRONMENTAL FACILITIES CORPORATION

MATTHEW J. DRISCOLL, *President and CEO*

June 24, 2014

The Honorable Brian P. Kavanagh  
New York State Assembly  
Room 419  
Legislative Office Building  
Albany, NY 12248

Dear Assemblyman Kavanagh:

In response to your letter dated June 19, 2014, I wanted to correct some factual errors regarding EFC's proposed financing of environmental projects in the New York-New Jersey Harbor Estuary (per the agreement between New York State and several environmental-protection organizations).

Section 1285-b is not the correct section of EFC's enabling statute when determining the eligibility of a project under the Clean Water State Revolving Fund (CWSRF). The applicable section is 1285-j, which governs the implementation and administration of the CWSRF. Section 1285-j references the Environmental Conservation Law Section 17-1909 for the definition of an eligible project, which, in turn, references the Federal Water Pollution Control Act (33 USC Section 1383), which allows for the financing of Clean Water Act Section 212, 319 and 320 projects.

For our proposed loan to the Thruway Authority, we are proposing to finance these estuary projects as a Section 320 project.

Section 1285-j was enacted in 1989 in order to facilitate the State's administration of the CWSRF, which was authorized pursuant to federal law in 1987. Section 1285-j (1) (b) of the Public Authorities Law provides that "Moneys in the water pollution control fund shall **only** be used in accordance with the provisions of this section and with Section 17-1909 of the ECL. ECL 17-1909 provides that "Eligible Project" means a project for construction of a facility **which would be eligible for financing under the Federal Water Pollution Control Act ... ."**

Under the Federal Water Pollution Control Act (33 USC Section 1383 (c)), the funds available to each State water pollution control revolving fund shall be used only for providing financial assistance (1) to any municipality, intermunicipal, interstate or State agency for construction of publicly owned treatment works (as defined in Section 212 of this Act), (2) for the implementation of a management program established under section 319 of this Act, and **(3) for development and implementation of a conservation and management plan under section 320 of this Act.**

EFC's website. In your letter, you state:

Moreover, the EFC website states that the purpose of the CWSRF is to provide "low-interest rate financing to municipalities to construct water quality protection projects such as sewer and wastewater treatment facilities".

Two sentences later, the EFC website ([www.efc.ny.gov/cwsrf](http://www.efc.ny.gov/cwsrf)) notes that "certain habitat restoration and projects in national estuary program areas" are eligible for CWSRF financing:

The CWSRF provides low-interest rate financing to municipalities to construct water quality protection projects such as sewers and wastewater treatment facilities. A variety of publicly-owned water quality improvement projects are eligible for financing. Eligible projects include point source projects such as wastewater treatment facilities and nonpoint source projects such as stormwater management projects and landfill closures, **as well as certain habitat restoration and protection projects in national estuary program areas.**

That citation is, of course, the very essence of EFC's contention that the financing of projects within the NY-NJ Harbor Estuary falls squarely in the statutory authority granted under Title VI of the Clean Water Act. Title VI authorizes New York and other states to use the CWSRF to provide financial assistance for the development and implementation of a Comprehensive Conservation and Management Plan (CCMP) of a National Estuary. It is important to remember that the CCMP was drafted and agreed to by a large number of interested parties and was later accepted and officially certified by the EPA in 1997.

The main objectives of this CCMP speaks to managing habitat and living resources, toxic contamination, dredged material, pathogenic contamination, floatable debris, nutrients and organic enrichment, rainfall induced discharges, and public involvement and education. Any project that implements these objectives is eligible for financial assistance from the CWSRF. For example, projects like a public outreach program are specifically mentioned in the CCMP for building public awareness and appreciation of the estuary. Accordingly, even though the benefit to water quality might be described as indirect, such a program clearly advances the CCMP and is eligible for CWSRF financial assistance.

It is important to note that the \$511 million loan will not be paying for any of the vehicular roadway or any of the support and foundation of the Tappan Zee Bridge. Rather, it will be utilized for environmental measures that will protect water quality and marine life in the Hudson River Estuary, projects that assist in the implementation of the U.S. EPA Approved National Estuary Comprehensive Conservation and Management Plan. This includes the protection of endangered Atlantic sturgeon, oyster beds, and other habitats during and after construction of the New NY Bridge.

Officials of the Washington headquarters of the EPA, including those charged with administering the national State Revolving Funds program, concurred in our analysis that the proposed estuary projects are eligible for CWSRF financing because they meet the objectives of the CCMP and Section 320 of the Clean Water Act. EPA also acknowledged that its approval is not required prior to the closing of every CWSRF loan, including the financing of these Section 320 projects. After careful analysis, EFC strongly believes that the estuary projects proposed for the NY-NJ Harbor Estuary are consistent and eligible for CWSRF financing under the federal Clean Water Act. EFC welcomes and will review and consider the advisory views of EPA officials and other interested parties.

Of the \$100 billion in financial assistance provided by the Nation's CWSRFs since inception, only \$6 million was originated in direct support of one of the 28 Estuaries of National Significance. Like any innovative idea, our proposal to use CWSRF financing for estuary projects has prompted many questions and more than a few ill-informed attacks. Much

of this is based on a lack of understanding and knowledge of technical and somewhat-obscure sections of federal law. That does not, however, excuse the misrepresentations offered by some parties who should be better informed about the CWSRF, the EFC and EFC's history as the largest and one of the most-innovative administrators of this nationwide program.

While EPA has scolded some states for not spending enough of their federal- and state-funded resources under the CWSRF, New York State and EFC have made every effort to disperse every dollar available for CWSRF eligible projects every fiscal year. In the current fiscal year, after receiving and scoring all of the project applications for CWSRF financing, we expect to finance roughly \$1.3 billion for projects in more than 100 communities across the state. Even then, EFC estimates that \$1 billion in CWSRF funding will remain unallocated at the end of the fiscal year. We can only finance the eligible projects that are presented to us. We cannot order a local government to undertake a CWSRF project nor force them to accept a loan from EFC. Instead, my staff has worked diligently to finance every project brought before us and, still, we expect to roll-over close to \$500 million in unspent funds into FFY2015.

The NY-NJ Harbor Estuary Loan will have no impact on EFC's ability to fully fund projects anywhere in New York State this FFY, including New York City. Between 2009 and 2013, New York City was allocated \$3.315 billion from the Clean Water State Revolving Fund, but took only \$1.171 billion or 35 percent of that available financing, resulting in an aggregate rollover of \$2.144 billion. In the current fiscal year, NYC is receiving more than \$400 million, including \$92,896,872 for five projects recently added to the EFC's Intended Use Plan for FFY2014. Next year, EFC expects to have an estimated \$549 million for NYC in the next fiscal year even after financing the NY-NJ Harbor Estuary Projects and more than 100 other, water-quality projects spread throughout New York State.

In considering the estuary project financing for the Thruway Authority, EFC followed its normal practices for adding projects when no other project funding would be affected. We published a notice in the June 11 edition of the state Environmental Notice Bulletin regarding revisions to the Intended Use Plan. At that time, EFC added the NY-NJ Harbor Estuary projects and five projects requested by New York City. EFC also provided the required 7 day notice of its June 26 board meeting as prescribed by EFC's bylaws and Section 104 of the Public Officers Law.

I appreciate the opportunity to clarify any misunderstanding regarding EFC and its work. Please let me know if you have any further questions.

Sincerely,

Matthew J. Driscoll  
President and CEO

cc: Assemblyman James F. Brennan  
Assemblyman Daniel J. O'Donnell

MJD/JS