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JOE MARTENS
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ALBANY, NEW YORK 12233-1010

MEMORANDUM

TO: Administrator McCarthy
FROM: Commissioner Martens
SUBJECT: SRF Financing
DATE: June 23, 2014

I appreciate the call last week regarding New York's proposed use of its State Revolving Fund (SRF) for various projects associated with the Tappan Zee Bridge project. As the Chairman of Board of the entity that will consider the financings this week, I wanted to respond to your concerns quickly.

The Clean Water Act authorizes states to use our CWSRFs to provide financial assistance for the development and implementation of a comprehensive conservation and management plan (CCMP). The relevant CCMP was written broadly by scores of interested parties and accepted by EPA. Its main objectives are 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 develops or implements these objectives is eligible for financial assistance from the CWSRF.

The only relevant inquiry is whether each of the projects under consideration can be fairly characterized as implementing one or more objectives of the CCMP. While many of the proposed projects provide benefits to water quality, that is not the test for eligibility. Similarly, if a project is in mitigation of another activity or is mandated by a permit, the question remains whether it implements the CCMP. Congress clearly did not require water quality as a mandatory eligibility criterion or choose to impose such a limitation on projects covered by 33 USC 1383(c)(3).

Dedicated revolving funds have become an increasingly popular tool for sustainable infrastructure finance. The SRF, one of the earliest revolving funds, has been operating and gaining financial momentum since the 1980's. With constrained resources and urgent infrastructure needs, innovation in infrastructure finance is critical today. Reaching for more creative and efficient methods to use existing financial resources and existing programmatic authority to achieve environmental and infrastructure objectives is a necessity and one that EPA supports. 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. That should change.

The Environmental Facilities Corporation General Counsel Jim Levine provided a detailed analysis to George Ames dated May 28th explaining how each of the proposed projects implements the CCMP. Jim's analysis is compelling and, I believe, supports the conclusion that these projects are eligible for SRF financing. I am grateful for the past support we have received from EPA staff to explore novel questions relating to the SRF that have allowed the program to work to achieve its intended scope. The EFC Board meets this week so I would appreciate your feedback and thoughts as soon as possible.

c: Bob Perciasepe