



PUBLIC NOTICE
CWSRF Amortization Schedule Variance Request CWC-V-2-16

DATE: June 10, 2016

The Department of Natural Resources hereby places variance request CWC-V-2-16 on public notice.

On the basis of preliminary staff review and the application of applicable standards and regulations, the Department of Natural Resources, as administrative agent for the Missouri Clean Water Commission, proposes to recommend approval of variance request CWC-V-2-16. The proposed recommendation is tentative pending public comment.

Persons wishing to comment on the proposed variance request are invited to submit them in writing to: Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, Missouri 65102-0176, ATTN: Financial Assistance Center. **Please include the variance request number in all comment letters.**

Comments should be confined to the issues relating to the proposed action and the effect on water quality.

All comments must be received or postmarked by 5:00 p.m. on July 11, 2016. The department will consider all written comments, including e-mails, faxes and letters, in the formulation of all final determinations regarding the applications. E-mail comments will be accepted at the following address: FAC@dnr.mo.gov.

CWSRF Amortization Schedule Variance Request CWC-V-2-16
State of Missouri
Department of Natural Resources

The city of St. Joseph submitted a variance request to the Department of Natural Resources on May 5, 2016. The application was submitted pursuant to Section 644.061, RSMo.

The city of St. Joseph is requesting a variance to 10 CSR 20-4.041(9)(A) Direct Loan Program. This paragraph covers the amortization period of the debt obligation for Clean Water State Revolving Fund (CWSRF) Direct loans. The statement in the regulation pertaining to this variance states,

“The bonds, notes or other debt obligations shall be fully amortized in no more than twenty (20) years after initiation of operation;”

The Water Resources Reform and Development Act of 2014 (WRRDA) was signed into law by President Obama on June 10, 2014. WRRDA included amendments to the Federal Water Pollution Control Act (FWPCA) that directly affects the CWSRF program. As amended, section 603(d)(1)(A) now states that CWSRF loans may be made,

“at terms not to exceed the lesser of 30 years and the projected useful life (as determined by the State) of the project to be finance with proceeds of the loan.”

Revisions to 10 CSR 20-4.041(9)(A) are currently in process and, if adopted, may allow the CWSRF program to extend the amortization schedules to qualified recipients for up to 30 years, but not exceeding the projected useful life, consistent with current federal law. During stakeholder meetings, both support for and concern with extended financing was shared by stakeholders. Some stakeholders supported the idea because of the fact that a longer repayment term would result in lower annual debt payments which keeps user rates lower. Concern was shared by some stakeholders that a community did not pay off its debt in 20 years on an original project, it would not be in a position to be ready to take on any additional projects until the longer debt was retired.

The department is required to manage the CWSRF fund in perpetuity. This includes the department responsibility to manage the funds in a fiscally responsible manner and making repayments available for new loans indefinitely into the future. The department believes it is prudent to develop a policy independent of the regulation and variance, by which loan terms exceeding 20 years may be available for CWSRF applicants. Key considerations will likely include the affordability of the project for the community, the department’s fiscal management of the CWSRF funds, keeping the CWSRF simple for applicants to understand and the department to manage, and to address applicants who may wish to refinance existing loans.

St. Joseph Request & Support

The city is requesting that future CWSRF loan funding be considered for an amortization term of 30 years. This variance would allow the city to afford a larger loan without having to further increase user rates. Based on the city’s 2014 user rates, the city estimates that it could afford to borrow \$61.8 million using a 20 year amortization schedule using recent CWSRF interest rates. However, a 30 year

amortization schedule assuming the same interest rate would allow the city to borrow \$87.3 million with the same user rates for a longer term.

In recent years, the city of St. Joseph has pursued compliance with water quality standards and a 2013 Consent Agreement from the Environmental Protection Agency to stop the discharge of pollutants from unauthorized point sources. The city has been working on three separate projects to reduce Combined Sewer Overflows (CSO) and to upgrade the city's wastewater treatment facility. To fund these projects, the city has received \$96,245,000 in CWSRF Direct Loans since 2013.

The city of St. Joseph applied to the CWSRF program for funding on September 24, 2014 for the Blacksnake Creek Stormwater Separation project. The project is listed on the Combined Sewer Overflow Fundable List in the Intended Use Plan and Priority List for Fiscal Year 2016. The project is estimated to cost approximately \$100 million and the city is seeking \$87,300,000 in CWSRF loan funds.

The city's current sewer user rate for 5,000 gallons usage per month is \$61.13, or approximately 1.7 percent of the median household income. The city has implemented rate increases over the last several years to support the capital projects referenced above. In addition, the city anticipates additional capital projects in the future to comply with the 2013 Consent Agreement. The city desires to keep user rates affordable while securing the necessary funds to support capital improvements necessary to comply with the FWPCA.

Other CWSRF Recipients

The department believes that other CWSRF applicants may be similarly situated as St. Joseph regarding affordability of implementing of necessary capital improvements. Rather than bringing individual variance applications for each of these applicants, the department proposes to recommend a variance for all eligible CWSRF applicants be put in place until the earlier of the following (i) rulemaking process is completed for 10 CSR 20-4.041 with this change or (ii) October 31, 2017. This variance is consistent with federal law as a result of WRRDA.

As stated above, the department intends to develop a policy regarding amortization schedules that extend beyond twenty (20) years, including applicant eligibility and the financial terms. The policy will be published on the department's website and incorporated in whole or by reference in future CWSRF Intended Use Plans.

This variance would apply only to CWSRF applicants receiving a CWSRF Direct Loan pursuant to 10 CSR 20-4.041 after the effective date of the variance and would not apply to Direct Loans pursuant to 10 CSR 20-4.041 funded by sources outside the CWSRF program.

Department Recommendation

The department proposes to recommend that the Missouri Clean Water Commission (CWC) approve a variance to 10 CSR 20-4.041(9)(A) allowing the department to issue CWSRF Direct Loans with amortization schedules that requires the bonds, notes or other debt obligations be fully amortized in no more than 30 years after initiation of operation. The department recommends the variance without a public hearing based on the following justifications:

10 CSR 20-4.041(12) states “This rule sets out the general format for the direct loan programs. The commission and the department shall have the authority to make specific refinements, variations or additional requirements as may be necessary in connection with the efficient operation of the direct loan program”

The department believes granting this variance is necessary for the efficient operation of the CWSRF Direct Loan program.

The Missouri Clean Water Commission is, among other things, legally authorized to grant individual variances from the requirements of the Missouri Clean Water Law and the regulations adopted under it, unless a variance is prohibited by any federal water pollution control act.

1. "...if...compliance...will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people ... " (644.061.1, RSMo)

The department believes that granting this variance will not result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people. Moreover, by allowing amortization schedules up to 30 years for certain CWSRF loans, recipients could potentially be able to afford a larger loan, allowing them to complete a major project and/or result in lower annual debt service payments resulting in savings which can be passed on to customers.

2. "...no variance shall be granted where the effect of a variance will permit the continuance of a condition which may unreasonably cause or contribute to adverse health effects upon humans or upon fish or other aquatic life or upon game or other wildlife... " (644.061.1, RSMo)

The department does not believe that the effect of this variance will permit the continuance of a condition which may unreasonably cause or contribute to adverse health effects upon humans or upon fish or other aquatic life or upon game or other wildlife. This variance will allow applicants with lower operating budgets to more easily afford wastewater treatment improvements needed to comply with FWPCA requirements.

3. "...any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by other law for the commission or maintenance of a nuisance." (644.061.1, RSMo)

Granting this variance should not be considered as relieving any potential CWSRF recipient of any liability imposed by other law for the commission or maintenance of a nuisance. Any CWSRF recipient who receives the extended amortization schedule, will still be required to comply with all applicable laws and regulations. Amortization schedules up to 30 years, subject to not exceeding the projected useful life, are explicitly allowed pursuant to the FWPCA.

4. "Variances shall be granted for such a period of time and under such terms and conditions as shall be specified in its order... in no event shall the variance be granted for a period of time greater than is reasonably necessary for complying with sections 644.006 to 644.141... "

It is recommended that this variance be effective until the earlier of the completion of a rulemaking process for 10 CSR 20-4.041 with this change or October 31, 2017. This variance would apply to all qualified CWSRF recipients pursuant to a policy to be developed and published by the department.

This variance will not require approval by the Environmental Protection Agency as the city is not requesting a variance to Water Quality Standards.

Enclosures:

Exhibit 1- April 28, 2016 Variance Request

City of St. Joseph

1100 Frederick Avenue, St. Joseph, Missouri 64501

April 29, 2016

Mr. Jeremy Payne, Project Coordinator
Missouri Department of Natural Resources
DEQ/WPP/FAC
PO Box 176
Jefferson City, MO 65102

Re: City of St. Joseph, MDNR Variance Application (780-0181-f)

Mr. Payne:

The City appreciates you taking time to provide the documentation needed to complete the MDNR Variance Application for the Blacksnake Creek State Revolving Fund project. You will find the letter, the attached Variance Application and supporting documentation for your review, consideration and approval.

It is understood that the regulation associated with this variance application is 10 CSR 20-4.041(9)(A). The rule addresses the Direct Loan Program amortization schedules and states, "The bonds, notes or other debt obligations shall be fully amortized in no more than twenty (20) years after initiation of operations."

City of St. Joseph Staff and MDNR Financial Assistance Center Staff have worked together over the past four years with the State Revolving Fund program. This collaborative effort has resulted in the City's project being placed on the Fiscal Year 2016 Intended Use Plan, but the team effort has not reached a point for construction loan agreement at this time. The loan agreement must be developed between the MDNR and the City to provide all terms and conditions associated with the low interest loan.

This variance application is directly related to Provisions of the 2014 Water Resources Reform and Development Act (WRRDA) that allow States to implement a 30 year term under certain conditions. The city understands that the MDNR may soon implement a rule change to address this matter; however, the rule change will not be in place by the City's anticipated loan closing date. With this information, the City is requesting that MDNR consider including the use of a 30 year term in its State Revolving Loan Fund Agreement.

The City recognizes the department charge of a \$250.00 variance fee for processing. The City requests the variance fee of \$250.00 be waived for the Blacksnake Creek Project. The State is currently evaluating a rule change to include the 30 year term. Implementation of the new rule change will not occur by the anticipated loan closing date requiring the City and MDNR to address the 30 year term prior to availability.

Thank you for your consideration of this request and for working collaboratively with the City of St. Joseph to address this critical project.

Sincerely,

A handwritten signature in blue ink, appearing to be 'A. Clements', with a long horizontal stroke extending to the right.

Andrew Clements, Asst. Director of Public Works & Transportation
City of St. Joseph, MO



**MISSOURI DEPARTMENT OF NATURAL RESOURCES
MISSOURI CLEAN WATER COMMISSION
VARIANCE APPLICATION – 644.061 RSMo 1986**

FOR DEPARTMENT USE ONLY

DATE RECEIVED

This application must be accompanied by a \$250.00 filing fee. Make your check, money order, or bank draft payable to the State of Missouri. Cash cannot be accepted. Mail to:

Director of Staff
Missouri Clean Water Commission
Missouri Department of Natural Resources
Water Protection Program, Water Pollution Branch
P.O. Box 176
Jefferson City, MO 65102-0176

Please complete and return. Use separate sheets, if necessary.

COUNTY	PHONE WITH AREA CODE	FAX
Buchanan County	Phone:(816) 271-4653	Fx: (816)-271-4740

ADDRESS	STREET	CITY	STATE	ZIP
1100 Frederick Ave. Room 204 St. Joseph, MO 64501				

FACILITY NAME
BLACKSNAKE CREEK STORMWATER SEPARATION IMPROVEMENT PROJECT (see current Facilities Plan on file with MDNR)

ADDRESS	STREET	CITY	STATE	ZIP
Collection System Throughout City (see current Facilities Plan on file with MDNR)				

2. NPDES PERMIT NUMBER (IF APPLICABLE)
MO- N/A

3. POINT OF DISCHARGE
N/A 1/4, _____ 1/4, SEC _____ T _____ R _____ COUNTY Buchanan Count

NAME OF RECEIVING STREAM
Blacksnake Creek to the Missouri River (see current Facilities Plan on file with MDNR)

Classification of receiving stream "P" under Missouri Water Quality Standards 10 CSR 20-7.031.

4. CITE SPECIFIC SECTION OF LAW OR REGULATION FOR WHICH A VARIANCE IS SOUGHT.
The regulation for which the variance is needed is 10 CSR 20-4.041(9)(A) - Direct Loan Program amortization schedule

5. IF VARIANCE PROPOSED A CHANGE OF POLLUTANT LIMITATION, LIST THE TYPE, QUALITY AND QUANTITY OF POLLUTANT AND PROPOSE ALTERNATE LIMITATIONS USING APPROPRIATE LIMITS.
N/A

6. DESCRIBE THE WATERWATER FACILITY.
N/A

7. STATE THE REASON A VARIANCE IS BEING SOUGHT. BE SPECIFIC.

The City is requesting the State consider a 30 year term for funding. This term is identified as an option for consideration in the 2014 Water Resources Reform and Development Act (WRRDA). The variance relates to the Direct Loan Program amortization schedules "The bonds, notes or other debt obligations shall be fully amortized in no more than twenty (20) years after initiation of operations". This amendment will effectively allow the City to afford 40% more project within a fixed debt service at the current rate structure, thereby result in the ability to construct a holistic project.

7a. WILL COMPLIANCE WITH THE APPROPRIATE LAW OR REGULATION RESULT IN UNREASONABLE COST WITHOUT COMPARIABLE PUBLIC BENEFIT?

Yes No

If the answer is yes, provide a cost of the operation:

Complying with the law or regulation	\$ 87,300,000
Using the proposed limitations	\$ 61,867,632
Cost Difference	\$ 25,432,368

Include consultant reports and vendor information supporting these costs.

7b. WILL THE LAW OR REGULATION RESULT IN ECONOMIC HARDSHIP FOR THE INDUSTRY?

Yes No

If yes, attach the following information:

Federal income tax returns for each of the three years immediately preceding the application; or
 an annual fiscal report; or
 a list of the principal officers and their salaries; or
 all income derived from the operation.

This information may be submitted as confidential and the agency shall respect the confidential rights of the applicant.

8. IF THIS IS AN EXISTING DISCHARGE, PROPOSE A COMPLIANCE SCHEDULE TO UPGRADE THIS FACILITY TO MEET THE APPLICABLE LAW OR REGULATION OR TO ELIMINATE THE DISCHARGES(S).

The City of St. Joseph is implementing a Combined Sewer Overflow (CSO) Long Term Control Plan as Submitted to the Missouri Department of Natural Resources (MDNR) on February 15, 2008, in order to improve water quality as mandated by the Federal Clean Water Act. The City is actively working towards implementing various storm-water improvements which coincide with the improvements proposed via SRF funding.

9. FURNISH THE NAMES OF ALL ATTORNEYS, CONSULTANTS, VENDORS, AGENTS AND ALL OTHER PARTIES WHO HAVE RENDERED SERVICE OR FURNISHED INFORMATION. INCLUDE THEIR ADDRESSES, TELEPHONE NUMBER, AND NATURE OF SERVICE OR INFORMATION PROVIDED.

Black & Veatch, Engineering Consultant, 11401 Lamar Avenue · (913) 458-2000, Matt Schultz, PE, Project Manager.

10. I believe that the above information is correct and complete.

SIGNATURE 		DATE April 28, 2016
NOTARY PUBLIC EMBOSSEER SEAL	STATE OF	COUNTY
	SUBSCRIBED AND SWORN BEFORE ME,	
	DAY OF	YEAR
	NOTARY PUBLIC SIGNATURE	MY COMMISSION EXPIRES
NOTARY PUBLIC NAME (TYPED OR PRINTED)		USE RUBBER STAMP IN CLEAR AREA BELOW.

VARIANCE APPLICATION
Summary of Section 644.061 RSMo 1986

1. Application form is complete.
2. \$250.00 filing fee paid.
3. The Executive Secretary shall investigate and make a recommendation to the Clean Water Commission within sixty days.
 - * Granted – go to 4, then 5.
 - * Denied – go to 4, then 6
4. Notify petitioner of staff decision and send notification to those people on the mailing list from the petitioners county.
5. Recommendations to grant variance:
 - A. The Clean Water Commission may grant the variance without a hearing, at which time a 30 day public notice must be allowed to receive public comments. If a petition is filed against the variance, a hearing must be held. Go to 7.
 - B. The Clean Water Commission may set the matter for hearing. Go to 7.
6. If the staff recommends denial, the petitioner may request a hearing within the 30 day notice period to be held before the Clean Water Commission. Go to 7.
7. A hearing will be held according to Section 644.066 and the Administrative Procedures Act.

CONDITIONS OF A VARIANCE

1. No variance shall be granted where the effect of a variance will permit the continuance of a condition that may unreasonably cause or contribute to adverse health effects on humans or upon fish or other aquatic life or upon game or other wildlife.
2. The commission shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the applicant and to those affected by water contaminants emitted by the applicant.
3. Variances shall be granted for such period of time and under such terms and conditions as shall be specified by the commission.

Blacksnake Creek Stormwater Separation

MDNR (SRF) Variance Application (780-0181-f)

1 HISTORY

The City of St. Joseph, Missouri is experiencing repetitive flood occurrences along the Blacksnake Creek that has resulted in critical health, safety, environmental and economic issues. Over the past fourteen years, the City has taken a consistent proactive approach to resolve the Blacksnake basin stormwater quality and conveyance issue.

Activities include engaging an engineer to study the stormwater basin and to provide viable technical and financial solutions for the community. Preliminary facilities planning indicate the selected technical option will have a construction cost of approximately \$100 million. The selected plan includes removing the existing stormwater interconnect to the City's central wastewater collection system and transport the stormwater runoff from the Blacksnake Creek Basin, directly to the Missouri River.

To date, the city has applied for Missouri Department of Natural Resources, State Revolving Funding in the amount of \$87,300,000. The city also conducted a utility rate sufficiency study in 2014 that proposes rate increases of approximately 7% over four years to address needed capital improvements, which includes the Blacksnake Creek Stormwater Separation Improvements project.

2 STATEMENT OF ISSUES

The City's engineering team recently presented an option to request the MDNR consider adopting a variance of the current funding terms to extend the 20 year term to 30 years. Provisions in the 2014 Water Resources Reform and Development Act (WRRDA) allow States to implement a 30 year term under certain conditions.

As noted above, the City implemented rate increases to begin addressing their fiscal needs associated with this project. The rates adopted in 2014 will fund a \$61,867,632 project under the current MDNR – SRF 20 year term and 1.3% interest. Should MDNR accept and adopt the 30 year term, the current rates will fund an \$87,300,000 project; a 40% increase in needed capital improvements.

3 ACTION PLAN

The City must continue to move the Blacksnake Creek Stormwater Separation project forward in an effort to comply with the Missouri Department of Natural Resources Combined Sewer Overflow (CSO) Long Term Control Plan dated February 15, 2008. Acceptance of the MDNR – SRF Variance Request to allow the use of a 30 year term, would provide the needed capital to implement the total project, under the current schedule.

In summary, the City has received public approval and implemented rate increases in 2014 to fund capital improvements (\$61.9 million under current terms of 1.3% and 20 years). The requested 30 year term provides affordability to sustain repayment calculations for the total project costs of \$87.3M in State Revolving Loan Fund borrowing.

4 FISCAL IMPACT

Funding is critical to implement this capital improvements project within an acceptable time frame. The City of St. Joseph has taken proactive measures to systematically facilitate basic improvements within the Blacksnake basin. At this time, the city can obligate approximately \$61.9 million (based on the terms described below) towards a base project with an estimate cost of \$100 million. A 30 year term, under the recently adopted rates, will fund a capital improvement costing approximately \$87.3 million and allow timely implementation of the improvements. The amortization tables below are based on an annual payment of \$3,532,879 which is supported by the recently adopted rates. The terms vary from 20 years to 30 years. The loan amount is the calculated variable.

30 Year Term with payments of \$3,532,879 per annum

<u>Present Value of an Annuity</u>	-
<u>Payment per Period</u>	<u>\$3,532,879</u>
<u>Number of Periods</u>	<u>30</u>
<u>Interest Rate per Period</u>	<u>1.3%</u>
<u>Present Value</u>	<u>\$87,300,000</u>

20 Year Term with payments of \$3,532,879 per annum

<u>Present Value of an Annuity</u>	-
<u>Payment per Period</u>	<u>\$3,532,879</u>
<u>Number of Periods</u>	<u>20</u>
<u>Interest Rate per Period</u>	<u>1.3%</u>
<u>Present Value</u>	<u>\$61,867,632</u>