

STATE OF COLORADO

Colorado Water Conservation Board Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Mike Serlet, P.E., Chief
Water Supply Planning and Finance Section

DATE: January 20, 2009

SUBJECT: **Agenda Item #12 – January 27-28, 2009, Board Meeting
Water Supply Planning and Finance Section – General Financial Matters for
Existing Loans**

Bill Ritter, Jr.
Governor

Harris D. Sherman
DNR Executive Director

Jennifer Gimbel
CWCB Director

Dan McAuliffe
Deputy CWCB Director

General Discussion

Given the current unstable worldwide economy, the United States economic recession and the State of Colorado's budget shortfall, the Water Supply Planning and Finance Section thought it would be a good time to briefly present to the Board the current existing water project loans of concern (see attached spreadsheet). These loan projects are in various stages of completion, ranging from 100% completed and in re-payment, to not substantially complete with the borrower in danger of dissolving as an entity. This information will not be presented to alarm the Board, but rather as an indicator of how the CWCB loan program is being impacted by the economic conditions of the world.

We will also briefly discuss three related Water Project Financial Policies as they relate to the projects of concern. Those policies are: #1 – Project Time Limits, #3 – Loan Delinquency, Loan Restructuring and Collections, and #5 – Collateral (all attached). The discussion of these policies will also serve as a review for current Board members and as an orientation to the financial policies for new Board members.

This will be a short discussion item only, with more detailed decision items to be presented at the March Board Meeting in Longmont.

Colorado Water Conservation Board Loan Projects of Concern

<u>Entity Type</u>	<u>Loan Amount</u>	<u>Loan Balance</u>	<u>Collateral</u>	<u>Status</u>	<u>Basin</u>
Individual	\$ 90,000	\$ 75,000	Water Rights	Last pmt 10/06. Unable to contact	Arkansas
		at risk			
Home Owners Assoc.	\$ 206,000	\$ 157,000	The project plus a CD	In default. Turned over to collections	Animas / La Plata
		lost			
Ag Users	\$ 1,037,700	\$ 942,494	Assessments plus the	Not in repmt. Entity is dissolving.	South Platte
		at risk	project.		
Municipality	\$ 200,000	\$ 144,000	Pledge of assessments	Poor municipality unable to make payments	Arkansas
		at risk		40 year loan term.	
Res.& Irrigation Co.	\$ 300,000	\$28,000 IDC	Assessments plus CD	Owe I.D.C. & have received a WSRA grant	Animas / La Plata
		working			
Water Conservancy Dist.	\$ 5,000,000	N/A	AAA rated annuity	Collateral reduced in value. De-authorize	Animas / La Plata
		working		portion & need alt. collateral for remainder	
Water User Assoc.	\$ 960,840	N/A	Assessments plus CD	Not in repmt. Short I.D.C. set aside.	Arkansas
		working			
Agricultural Company	\$ 231,795	\$ 209,871	Water Rights	Sold water rights loan was used to purchase	South Platte
		working		Owner financed.	
Water User Assoc.	\$ 162,180	\$ 140,258	Assessments plus the	Annual payment short by \$1,400.	Gunnison
		working	project.		

POLICY NUMBER: 1

SUBJECT: **CONSTRUCTION FUND AND SEVERANCE TAX TRUST FUND
PERPETUAL BASE ACCOUNT PROJECT TIME LIMITS**

EFFECTIVE DATE: October 1, 1999

POLICY: The Colorado Water Conservation Board (CWCBC) shall review the status of all Construction Fund and Severance Tax Trust Fund Perpetual Base Account loan projects that do not have a fully executed CWCBC funding contract within three years of the project's legislative authorization. These projects may be recommended for inclusion in the list of *Project Loan De-Authorizations* in the next annual Construction Fund Bill unless the Board specifically approves a time extension.

PURPOSE: To utilize construction funds in a timely manner, to assure availability of construction project funds for other uses, and to discourage Project Sponsors from attempting to "guarantee" loan funds for future long-range projects.

APPLICABILITY: This policy applies to ALL loan and grant projects authorized through the CWCBC Construction Fund and the Severance Tax Trust Fund Perpetual Base Account.

PROCEDURE: The CWCBC staff will compile and maintain a project authorization/contract list. Those projects without a fully executed CWCBC funding contract within three years of their authorizing legislation shall be presented to the Board for review at the September or November Board meeting. Project Sponsors will be notified of the CWCBC staff recommendations, and the Board's possible actions, at least one month prior to the Board meeting. Project Sponsors will be given an opportunity to appeal the staff recommendations at that meeting.

1. If the Project Sponsors have not shown diligence toward execution of a funding contract within three years of their authorizing legislation, the staff will recommend to the Board that the project be included in the *Project Loan De-Authorization* recommendation to the Legislature.
2. If the Project Sponsors have progressed towards execution of a project funding contract, but the progress has been delayed due to extenuating circumstances, the staff may recommend that the Board extend the project time limit for one year. The staff will continue to review the project on an annual basis until a CWCBC funding contract is fully executed or the Board has recommended de-authorization to the Legislature.

Approved by the CWCBC
September 27, 1999 Board Meeting
Agenda Item # 7

POLICY NUMBER: 3

SUBJECT: **CONSTRUCTION FUND AND SEVERANCE TAX TRUST
FUND PERPETUAL BASE ACCOUNT LOAN
DELINQUENCY, LOAN RESTRUCTURING AND
COLLECTION**

EFFECTIVE DATE: October 1, 1999

POLICY: The Colorado Water Conservation Board (CWCB) shall review all loans for which annual payments are 180 days, or more, past due. The Board's review shall include an examination of the Project Sponsor's payment history, Project Sponsor statements regarding extenuating circumstances and reasons for the delinquent or non-payment, and the consideration of problem solving opportunities, including referral for collection.

PURPOSE: To provide the Board with information regarding past due loan payments. This policy will allow Project Sponsors a reasonable time to make late loan payments, restructure their existing loan or develop other financial solutions to recover from periods of economic difficulties, drought, flood, or other hardships beyond their control. This policy will also define how loans will be referred to collections.

APPLICABILITY: This policy and procedure applies to ALL current and future loans from the CWCB Construction Fund and the Severance Tax Trust Fund Perpetual Base Account.

PROCEDURE: The statutes and provisions in the loan contract and contract documents provide the Board several options in dealing with delinquent loan payments, including, but not limited to, the following:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of a revised loan interest rate
- Assessment of a late charge fee
- Forgive all or part of the loan
- Debt referral to the State Central Collection Agency

At every Board meeting, staff will give the Board a comprehensive delinquency list or Loan Aging Schedule. The report will include a list of loan payments that are past due and the date payment was due.

To initiate loan re-payment, staff will send a reminder letter to each Project Sponsor 30 days prior to the loan payment due date.

In the event of a delinquency, staff will send a reminder letter to each Project Sponsor every 30 days. A late fee of 5% of one annual payment may be assessed for loan payments not received within 15 days of the due date.

Staff will contact the Project Sponsor by phone concerning a loan payment that is 60 days past due to remind the Project Sponsor of its debt obligation and to determine the extenuating circumstances preventing the Project Sponsor from meeting that obligation. Staff and the Project Sponsor will then agree upon an alternate date by which the payment will be made. If the Project Sponsor makes the payment as agreed all late fees associated with the delinquency may be waived at the discretion of the Director or his designee.

Staff will refer all loans to the Board, for which any individual loan payment is at least 180 days past due with a specific recommendation for one of the following actions, depending on the individual circumstance:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of an accelerated loan interest rate
- Accelerate the loan

If the delinquency continues, and is at least one year past due, staff will recommend that the Board either:

- Refer the bad debt to Central Collections and/or the Attorney General's Office to take appropriate legal action against the Project Sponsor
- Forgive all or part of the loan
- Continue to work with the Project Sponsor towards a successful re-payment schedule.

POLICY NUMBER: 5

SUBJECT: **COLLATERAL FOR CONSTRUCTION FUND AND SEVERANCE TAX PERPETUAL BASE ACCOUNT PROJECT LOANS**

EFFECTIVE DATE: September 27, 1999

REVISED DATES: January 22, 2003
July 21, 2004

POLICY: The Colorado Water Conservation Board (CWCB), pursuant to Section 37-60-120(1), C.R.S., shall take a sufficient security interest in property or take such bonds, notes or other securities evidencing an obligation, as will assure repayment of Construction Fund and Severance Tax Perpetual Base Account loans. The Board's determination of sufficient security will be based on the type of entity applying for project funding as well as the entity's creditworthiness, repayment capacity, and available assets.

PURPOSE: To establish a consistent method for determining sufficient collateral requirements of potential loan recipients.

APPLICABILITY: This policy applies to the consideration of all loan applications from the CWCB Construction Fund and Severance Tax Perpetual Base Account.

PROCEDURE: The CWCB staff will evaluate and recommend to the Board collateral requirements for project loan applications based on the following table. Collateral types will be evaluated and taken in priority until sufficient security is established for a specific loan. If real property is offered as collateral, the applicant shall be required to submit supporting documentation of land values, based on current land use and including improvements financed by the CWCB, from a Colorado Certified General Appraiser.

Prioritized Types of Collateral Per Type of Project Sponsor Entity

Public	Public	Private	Private
Governments	Districts	Incorporated	Unincorporated
1. Pledge of revenues backed by rate covenant and annual financial reporting	1. Pledge of revenues backed by rate covenant and annual financial reporting	1. Pledge of assessment revenues backed by assessment covenant	1. Facilities, water rights, and/or other real property valued at an amount equal to or greater than 110% of the loan amount
	2. Facilities, water rights, and/or other real property	2. Facilities, water rights, and/or other real property	2. Any other assets
	3. Any other assets	3. Any other assets	

Entity Types are defined as:

Public (Governments):

Municipalities
Enterprises
Counties
Federal Govt.

Public (Districts):

Special
Water/San.
Conservancy
Irrigation

Private (Incorporated):

Mutual Ditch Co.
Homeowners Assoc.
Non-profit Corp.

Private (Unincorporated):

Individuals
Partnerships
Sole Proprietors
Closely Held Corp.

Rate and assessment covenants are a standard provision in all CWCB loan contracts. The covenants require the borrower to levy rates or assessments that are adequate to repay the loan and to cover all operating expenses as well as debt service reserve requirements.

Annual financial reporting will be required in all contracts with public entities as of the date this policy is adopted and will entail the submittal of an annual audit report and a certificate of debt service coverage by a Certified Public Accountant at the time that the annual audit report is submitted to the CWCB staff; or, in the absence of an audit, annual financial reports normally filed by the entity, or as such other information as the Director may require.

Section 37-60-120(1), C.R.S. gives the CWCB discretion to determine what constitutes sufficient collateral that will assure repayment of CWCB Construction Fund and Severance Tax loans. To assure the repayment of such loans, the Board will require a first lien on revenues and other collateral pledged as security, or a parity lien if the borrower meets the existing lien holder's parity requirements. Collateral requirements will be related to the creditworthiness and repayment capacity of each potential borrower. The Board will determine the adequacy of collateral for each individual funding request.

For any specific funding request, the Board may instruct the CWCB Director to make a final determination on the adequacy of collateral, based on guidance provided by the Board. In such cases, the Director will report to the Board on the determination of collateral at a subsequent Board meeting.