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TO: Colorado Water Conservation Board Members

FROM: Jonathan Hernandez, P.E., Project Manager
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DATE: January 26-27, 2015 Board Meeting

AGENDA ITEM: 19b - Changes to Existing Loans
2013 Emergency Flood Loans - Contract Condition Change

Introduction

In response to the September 2013 flood event in the South Platte River Basin, CWCB made available emergency loans to water users affected by the flood event. In the original loan approval for all emergency loans, a contract condition was added which required any future grant funds obtained for the purpose of the Project be submitted to CWCB within thirty (30) calendar days after receipt of said funds to be applied to the balance of the loan.

After gaining a better understanding of the Federal Emergency Management Agency's (FEMA) Public Assistance Program's (FEMA grant) process, staff has become aware of a financial risk to our borrowers that the CWCB loan contract condition unintentionally created. This is because FEMA retains the right to rescind grant funds determined to have been advanced to the borrower in error; grant funding which was already applied to the emergency loan principal balance per the loan contract condition.

Staff Recommendation

In regard to the emergency loans identified below, staff recommends the Board approve a change to the original Contract Condition to require all FEMA grant funds be applied to the balance of the emergency loan within thirty (30) calendar days after FEMA Project Closeout, as long as the borrower deposits received FEMA grant funds in a secured account prior to Project Closeout. The secured account shall only allow for repayment of rescinded grant funds, or to pay down the CWCB emergency loan principal.

Furthermore, staff recommends the Board recognize these rescinded FEMA grants as an eligible expense in the future.

Emergency Loans: C150368, C150369, C150370, C150371, C150372, C150373, C150374, C150375, C150376, C150377, C150380, C150382, C150383, C150385, C150389, C150390, C150391, C150392, C150398, CMS 71730



Background

During the unprecedented flood of September 2013 in the tributaries to the South Platte River, a significant number of diversion structures and dams along the river corridor were damaged. CWCB responded to this event with an emergency flood loan program that offered to cover 100% of the repair cost and provided three years of no interest or payments. The three year period was intended to allow borrowers to complete repairs while providing time for them to identify any grant programs that could become available. CWCB's emergency loan contracts included terms that required borrowers to pay down the CWCB loan with any grant dollars they received for the project within thirty (30) days after receipt of said funds.

After many months of negotiations, FEMA determined that ditch companies could qualify for the public assistance program if there was a municipal interest in its shareholders. Of the 20 projects CWCB provided an emergency loan for, so far 14 have qualified for the FEMA grant program and Project Worksheets (PW) have been developed for these projects by FEMA personnel in the field. The PW sets the framework for which work is eligible and at what percentage FEMA will provide for reimbursement. These loans are identified below:

TABLE 1: EMERGENCY LOAN BORROWERS WITH A FEMA PROJECT WORKSHEET

Borrower	Emergency Project	Contract Number	Approved Loan Amount
North Poudre Irr. Co.	Fossil Creek Res. Inlet Div. Structure Repair	C150368/CT2015-024	\$477,000
Highland Ditch Co.	Highland Ditch System Repairs	C150369/CT2015-023	\$1,980,000
Left Hand Ditch Co.	Left Hand Ditch System Repairs	C150370/CT2015-008	\$3,243,620
Rough & Ready Irr. Ditch Co.	Rough & Ready Ditch River Div. Structure Repair	C150371/CT2015-031	\$1,825,000
Oligarchy Irr. Co.	Oligarchy Ditch River Div. Structure Repair	C150372/CT2015-025	\$1,248,000
Cons. Home Supply Ditch and Res. Co.	Big Dam Diversion Structure Repair	C150375/CT2015-010	\$1,840,000
Church Ditch Water Authority	Leyden Creek Crossing Repair	C150377/CT2015-014	\$600,000
Cons. Home Supply Ditch and Res. Co.	George Rist Ditch Repair	C150380/CT2015-020	\$514,000
Butte Irr. And Milling Co.	Berm Repair	C150382/CT2015-016	\$275,000
Green Ditch Co.	Green Ditch Channel Repair	C150383/CT2015-009	\$525,000
Haldi Ditch Co.	Haldi Ditch Repair	C150389/CT2015-046	\$50,000
Culver Lateral Ditch Co.	Culver Mahoney Ditch Repair	C150390 (No CT #)	\$150,000
Big Elk Meadows	Raw Water Storage Repair	C150391/CT2015-039	\$1,500,000
Saint Vrain and Left Hand WCD	Rock'n WP Ranch Lake No. 4 Repair Project	Not Yet Contracted	\$4,500,000

FEMA Reimbursement Process

FEMA does not contract with grant recipients directly. Instead, FEMA contracts with the Colorado Department of Public Safety Division of Homeland Security and Emergency Management (DHSEM), and DHSEM in turn contracts with each individual grant recipient, known to FEMA as a sub-grantee. Upon completion of tasks identified in the PW, the sub-grantee submits a request for grant payment to DHSEM. DHSEM reviews the project expenses in comparison to the PW. If DHSEM finds the request valid, grant funds are released from DHSEM to the sub-grantee. At this point, if the sub-grantee is one of CWCB's emergency loan borrowers, these funds are required to be used to pay down the emergency loan within thirty days of receiving the grant funds.

After the project is completed, the sub-grantee and DHSEM request a Project Closeout meeting with FEMA. At Project Closeout, FEMA reviews how DHSEM administered the grant to ensure the PW was followed, as well as all other FEMA grant requirements, and reconciles all actual costs. Here FEMA can

either: 1) determine the PW underestimated the project cost and thus increase the awarded grant, 2) determine the PW was accurate and all policies were followed and thus approve the awarded grant, or 3) determine that some, or all, of the awarded grant must be returned due to a change in the eligible expenses or a violation of FEMA cost reimbursement rules.

After Project Closeout occurs, FEMA can choose to audit a sub-grantee. The exact deadline for FEMA to perform an audit is unknown at this time because it is set to be three years after the Disaster Closeout. Disaster Closeout occurs when all PWs are considered closed. For reference, the Katrina hurricane disaster in 2005 has yet to be closed out, and the Northridge earthquake in 1994 closed out only within the last few years.

Should FEMA rescind grant funds either at Project closeout or during an audit, FEMA obtains these funds from DHSEM immediately and DHSEM must then attempt to be refunded by the sub-grantee.

Borrower Concerns

There is a general concern amongst some borrowers that any FEMA grant money received will simply have to be returned at some point in time. This concern stems from the complexity of cost reimbursement rules and that DHSEM's decision to pay grant requests is not a final FEMA decision until Project Closeout. Even then, the final FEMA decision can be overturned should an audit take place; a possibility that can reasonably loom for anywhere from 8 to 20 years after the flood event occurred.

CWCB Concerns

CWCB has a vested interest in the financial health of existing borrowers. A scenario where a borrower has to pay back the FEMA grant funds received can create a huge financial hardship if the borrower does not have the cash on hand and it is unable to raise the funds through special shareholder assessments.

CWCB Options

Staff worked with existing borrowers, DNR Controller's Office, and DHSEM to find ways that the CWCB Water Project Loan Program can help existing borrowers cover this possible large future expense. These options are summarized below:

- *Option A - CWCB Refund to Borrower:* CWCB returns the grant funds previously provided by borrower. While this can be done in specific cases, State Controller rules on disbursements may prevent this in other cases.
- *Option B - Hold Funds in Secured Account:* CWCB allows borrowers to hold FEMA grant funds in a secured account until project closeout, rather than require borrowers to immediately pay down loan principal when FEMA grant funds are received. This will require approval of the staff recommendation and an executed contract amendment.
- *Option C - New CWCB Loan:* If CWCB cannot return the grant funds previously provided by borrower, allow the borrower to seek a new loan for this expense. Borrower will be held to CWCB Water Project Loan Program requirements and interest rates at the time a loan application is submitted.

Financial Analysis

Options A and B do not require a new financial analysis because the Board approved the borrower for a loan amount that does not include FEMA grant funds. Those options would not create debt above the current loan approval. Option C is a new loan and so will require a new financial analysis at the time of application.

cc: Susan Schneider/Jennifer Mele, Colorado Attorney General's Office