TO: FINANACE COMMITTEE (FC)

FROM: EXECUTIVE DIRECTORS OFFICE (EDO)

SUBJECT: INTERPRETING THE MEANING OF “MAKING THE COUNTIES WHOLE”

DATE: AUGUST 14, 2015

I. Introduction

The Governance Committee (GC) of the Platte River Recovery Implementation Program (PRRIP or Program) at their meeting of September 3, 2014 in Kearney, Nebraska passed the following motion:

“To utilize the Program’s Good Neighbor Policy to ensure affected counties are made whole due to lost tax revenues from removing lands on those county tax rolls for the J2 Regulating Reservoir project.”

The purpose of this memorandum is to provide a starting point for interpretation of the terminology “making the counties whole” and establishment of the process and associated mechanics for implementing the agreed upon interpretation.

A. Key Understandings

Key understandings associated with this motion include:

- The Program is not paying taxes to the counties for land acquired and owned by the Central Nebraska Public Power and Irrigation District (CNPPID) associate with the J2 project, the counties are receiving compensation to mitigate the impact of lost annual property tax revenue. Under this interpretation, while the other parties to the agreement might be precluded from paying taxes, they may not be statutorily precluded from providing compensation for lost tax revenue. This would require a legal consultation if pursued. This document pursues only Program perspectives.
- The Program has no legal or contractual obligation to provide compensation to the counties or any other governmental body for real estate removed from the tax roles as a result of acquisition by CNPPID, it is being done voluntarily under the auspices of the Good Neighbor Policy.
- The degree of input solicited from the counties will be at the discretion of the GC.

II. Issues

A number of issues must be considered in developing the process and mechanics of implementing the policy of “making the counties whole”, among these are:

- What is the timeline required to develop a process resulting from land acquisition and the timing of tax payments?
- What amount is to be paid?
- Over what time period will payments be made?
- Will the annual amount paid vary over time, and if so how will the change be determined?
- How and when will the payments be made?

However, before delving into the details and nuances of the specific issues, a few basic understandings are provided to explicitly establish foundational concepts and definitions.

A. Basic Understandings

- The base year for computations will be the last year taxes were paid by a private owner.

- The base amount of taxes for computations will be the amount of taxes paid by a private owner in the last year taxes were paid by a private owner.
- Only the counties where land is removed from the tax rolls for the J2 Regulating Reservoir will be eligible for compensation.
- Only compensation for lost real estate tax revenue associated with land acquired by CNPPID for the J2 Regulating Reservoir will be made, no consideration will be made for any third party, indirect, or any other potential tax ramification to the counties where the acquired land is located, or other counties in the state of Nebraska or any other state, or to any other governmental body.
- Under the terms of the Water Service Agreement, payments for compensation to lost revenue are to be made to CNPPID, and they will pass the money over to the counties.
- Perception from the public as to meaning of "making the counties whole" is an issue that should be considered in the deliberations and managed carefully.

B. Exploration of Issues and Associated Options

- What is the timeline required to develop a process
  - A property was acquired in 2014, but the county collected all of the 2014 due and payable in 2015 real estate tax payments from the previous owner. The tax paid by the last private owner was small. The 2015 taxes due in 2016 are the revenue at issue, so a process should be implemented and payment made prior to April 30, 2016. Financially it is not a significant action, but establishing the process and making the precedent is the more critical concern.
- What amount is to be paid?
  - The basis tax amount (property tax amount paid by private owner in the last year of private ownership) will be the starting point with no distinction made between house, buildings, and basic land valuation proportions. See subsequent questions for potential escalation of payments.
    - i. All of the lost revenue even though only a proportion of the benefits accrue to Program.
    - ii. A proportionate share of lost revenue corresponding to the proportionate benefit received by the Program.

Preliminary discussion with the FC was moving toward the position of paying a proportionate share of lost revenue corresponding to benefit received. Unless someone else picked up the remainder of the lost revenue, it is the opinion of the EDO that this would not be perceived within the community as living up to "making the counties whole" promise.

- Over what time period will payments be made?
  - In perpetuity.
  - For a period of 50 years, with a 20 year option for renewal, corresponding to the term of the water service agreement. Tying the term of the compensation to the Water Service Agreement provides the assurance that as long as the Program exists and is deriving benefit from the project, compensation will be made.
  - A set time period with options for extending. For example, guarantee payment commencing at time of acquisition and extending through a period 5 years after reservoir operations commence, and then consider extensions of 5 or 10 year blocks.

    - A specific, set time period only, allowing time for county to adjust to lost revenues and compensate in other fashions.

As many of these options extend past the first increment, provisions such as making an endowment to provide assurance that the payments will be covered need to be developed.. The Land Interest Holding Entity, the Platte River Recovery Implementation Foundation (PRRIF) and /or the Nebraska Community Foundation (NCF) would be the likely candidates for housing such a financial instrument. The existing contracts/agreements with these entities will need to be modified to accommodate an expanded function.

Preliminary discussion with the FC lead to a seeming consensus that the commitment extend only to the end of the first increment. The option to extend compensation into a second increment would be part of the second increment negotiations. There are provisions in the Water Service Agreement that provide for the opportunity to renew or terminate the agreement at that juncture.

- Will the amount paid vary over time, and if so how will the change be determined?
    - The base amount every year with no escalation.
    - A set escalation factor (say 2 to 3% or some other number provided that it is "fair and reasonable").
    - A variable escalation determined in proportion to changing property taxes in the county in the vicinity of property.
    - A variable escalation rate tied to some other general index.

Preliminary discussion with the FC lead to a seeming consensus that the base amount should be escalated, but there was a range of opinions as to how that should be accomplished with the common thread through all of the concepts being that it should be a simple methodology. No apparent consensus on what methodology should be was achieved.

- How and when will the payments be made?
    - PRRIF determines amount based on established formula, sends "invoices" or notice that payment is due to EDO, notices are processed through normal Request for Disbursement procedure with payment through NCF. Funds provided to PRRIF annually for payment by PRRIF, which would require modification to LIHE agreement.
    - Endowment established for PRRIF or NCF to make payments, with endowment structured to pay itself out if a set term for payments is established. Modifications to PRRIF and/or NCF agreements would be required.

In any arrangement, regardless of the mechanics associated with issuing a payment, per the Water Service Agreement, the payment is to be made to CNPPID who then passes the payment on to the respective counties.

Preliminary discussion with the FC focused on an approach that kept the mechanics of payment within the normal annual budgeting and Request for Disbursement processes rather establishing an endowment structure or any other institutional layers or complications.