



P.O. BOX 234, PUEBLO, CO 81002  
[www.pueblolevee.org](http://www.pueblolevee.org)

BOARD OFFICERS:

CORINNE KOEHLER, PRESIDENT  
BARB BERNARD, VICE PRESIDENT  
PAUL WILLUMSTAD, TREASURER  
JERRY MARTIN, SECRETARY

ADMINISTRATOR / ENGINEER:

RICK KIDD, PE  
(719)544-5239

LEGAL COUNSEL:  
DONALD J. BANNER

June 4, 2019

Rachel Pittinger, PE  
Colorado Water Conservation Board  
1313 Sherman Street, Room 718  
Denver, CO 80203

In re: Pueblo Conservancy District Request for Increase in Existing Loan

Dear Ms. Pittinger:

In May of 2017 the Pueblo Conservancy District filed a Water Project Loan Program application addressed to Anna Mauss. As a result of that application and various documents presented to CWCB, a Colorado Loan Contract was entered into under Contract Numbers CMS 110587 and CT2019-366 signed by CWCB on September 13, 2018 and by the State on September 18, 2018. That Loan was for \$17,170,000.00 and has been completely funded as of this date although the Project, which was of necessity constructed in phases, has one more phase to be completed. The \$17.17 M loan is a fixed rate loan amortized over 30 years commencing on substantial completion of the project. With this letter the Pueblo Conservancy District is requesting the CWCB to consider an increase in our loan of an additional \$6,000,000.00 to allow us to complete the Project with long term financing from a single source. We would ask that this be considered at the November, 2019 meeting of the CWCB Board with funding, if approved through the Projects Bill, in July of 2020. We understand that this request would require approval by both your Board and then the Legislature.

First let me offer some background information about the Pueblo Conservancy District and the Project which was to repair the Arkansas River Levee and Wildhorse Creek Levee within the City of Pueblo in order to comply with the requirements of the Federal Emergency Management Agency (FEMA) standards to protect the City of Pueblo from flooding.

The Pueblo Conservancy District is a district created under the Conservancy Law of Colorado found in CRS 37-1-101 et.seq. The law was created in direct response to the 1921 flood in the

City of Pueblo that did millions of dollars of damage and caused the death of hundreds of citizens. Pursuant to that law the Pueblo Conservancy District was formed for the purpose of flood protection in the City of Pueblo. In the 1920's the District constructed a concrete levee through the heart of the City to carry the Arkansas River and Wildhorse Creek waters in such a manner as to prevent another flood in the City. Construction was completed in March of 1926. The Arkansas River Levee is approximately 13,000 linear feet (2.46 miles) long. The Wildhorse Creek Levee is located on the east side of Wildhorse Creek between 11<sup>th</sup> and 18<sup>th</sup> Streets in Pueblo and is approximately 3000 linear feet (.57 miles) long. I'm attaching a Vicinity Map that was included with the original loan application as Exhibit A and a brief History of the District. In 2012 the District requested the supervising Court to expand the boundaries of the District to include all of Pueblo County. After Notice and hearing, on January 26, 2013 the Court issued an order expanding the District to include all of Pueblo County.

As a result of the 2005 Hurricane Katrina, FEMA issued a ruling that all existing levees in the United States be certified to FEMA to comply with specific flood control standards as established by FEMA. The levees in Pueblo, built in the 1920's, could not be so certified and as a result, if not repaired to a condition that would allow certification, significant portions of the City of Pueblo would be classified by FEMA as being in a flood plain. Such classification would have dire economic consequences for the City in that no residential or commercial loan could be obtained without providing prohibitively expensive flood insurance. Notwithstanding the completion of the construction of the Pueblo Dam in 1976, a 2006 study by FEMA showed that if the levees through Pueblo were not repaired and certified to FEMA standards, virtually all of the downtown area, plus an area to the northwest of downtown would be flooded from a 100 year storm if the levees failed. Located in the area that would flood are a significant number of properties owned by the City of Pueblo and the County of Pueblo which provide essential public health, safety and welfare functions including but not limited to the Pueblo Police Department, the Pueblo Transportation Department, Pueblo City Hall (housing the Pueblo City Government), the 10<sup>th</sup> Judicial District Court newly constructed Judicial Building, the Pueblo County Sheriff's office, the Pueblo County Jail, the Pueblo City-County Health Department and the Pueblo Emergency Response Dispatch Center. Repairing the levees was not an option for the City and County of Pueblo; it had to be done.

The work that needed to be done to repair the Arkansas River levee included removing the top 12 feet of the entire 13,000+ linear feet of the levee to enable heavy construction equipment to access the face of the levee. The face of the levee is concrete poured at a 33 degree angle. The face of the levee has its toe approximately 5' to 8' below the bottom of the water level and rises between 18' and 30' above the water level. The river has to be diverted away from the toe of the levee during the construction period to allow for pouring new concrete for the toe. During the construction that has been accomplished to date many voids were discovered throughout the old levee as well as abandoned sewer and storm water piping which had never been properly abandoned by the City. Preparing the levee foundation, pouring and finishing concrete at this angle and for this height and depth is sophisticated work that requires a level of skill that few contractors have.

Because repair of the Arkansas River levee could only be done when the water level flowing through it was low, construction has generally been limited to occurring between November of

one year and March of the next year. It was estimated from the very beginning that the repairs would have to be made in phases. Phase 1 of the repair project was advertised for qualifications in September of 2013 and in November of 2014 a contract was entered into between ASI Constructors, Inc. and the District. Since then there have been five phases of repairs contracted for and Phase 5 is all but complete at this writing. A contract for construction of the final phase, Phase 6, was awarded to K.R. Swerdfeger Construction, Inc. at the District's Board meeting on April 24, 2019. It is believed that the construction of Phase 6, the final phase, will be completed by May of 2020 and we anticipate a project completion date of August 31, 2020.

There have been three different contractors who have worked on one or more of the previous five phases of levee repair: ASI Constructors, Inc., ASI Construction, LLC (a different contractor than ASI Constructors, Inc.) and K.R. Swerdfeger Construction, Inc. The District issued Requests for Qualifications from perspective contractors for the work required in Phases 1 through 5 of the project. Those responding to the RFQ who were deemed by the District's Board to be qualified had their sealed bids opened and an award was made to the lowest bidder.

The RFQ for Phase 4 included the following language in bold print: "Notice is hereby given that the Pueblo Conservancy District may negotiate with the successful Contractor for this Phase 4 of the Arkansas River Levee Project to complete future phases of the Arkansas River Levee Project." The published notice for Phase 4, published September 12, 19, 26 and October 2, 2017 included the exact same language. ASI Construction, LLC was awarded part of the Phase 4 contract and K.R. Swerdfeger Construction, Inc. was awarded another part of the contract. When the response to the RFQ for Phase 5 was received by the District, it was clear that ASI Construction, LLC was more than a million dollars higher than the bid of K.R. Swerdfeger Construction, Inc. and on October 21, 2018 a contract was entered into with K.R. Swerdfeger Construction, Inc. for construction of Phase 5. K. R. Swerdfeger Construction, Inc.'s work on Phase 5 was, from the District's perspective, outstanding. Difficulties that occurred during construction that were not the fault of the contractor were quickly and effectively resolved to the satisfaction of the District.

The District's independent engineering consultant, NorthStar Engineering and Surveying, Inc. has kept a close tab on the material costs for each of the phases of the project. NorthStar advised the District that informal communications with K.R. Swerdfeger Construction, Inc. indicated that the District could save a significant amount of money if the District opted to negotiate a contract for Phase 6 with the Swerdfeger firm and thereby, locking in material and equipment costs early in the year. An analysis of the material costs of the repairs since the project commenced was considered by the District along with cost proposals submitted by the Swerdfeger firm for Phase 6. The most significant cost involved in all phases of the repair work on the levee involved the cost for new concrete levee facing panel placement, which accounts for approximately 60% of the cost of each phase. No other work item in the project amounts to 10% of the cost of the project. In negotiating unit cost prices for Phase 6, the District was able to limit the unit cost for concrete to a 5.2% increase over the Phase 5 cost. The District determined that it was in the best interest of the District (and the taxpayers who fund the District) to negotiate directly with the Swerdfeger firm, which it has done.

All repair work on the Wildhorse Creek levee was completed in Phase 2 of the project. Attached as Exhibit A is a cost estimate of the remaining costs the District will incur to complete the repairs through Phase 6, the final phase of the Project, and submit to FEMA the required certification documentation of the levee system through Pueblo. The District will complete the Kayak Course Safety Ledge and the River Side Handrail/Fence, both for safety purposes. Total cost shown on the attached Remaining Cost Exhibit is \$5,621,562.00. The District desires to increase its loan from CWCB by \$6,000,000.00. This sum is in line with the estimated cost of the entire project originally estimated at \$23,000,000.00.

The current funding for the remaining construction costs is through a short term bond issued by the District and purchased by the Bank of the San Juans. While it is believed that the bank would be willing to refinance this bond at the then current bank interest rates, it is greatly advantageous to deal with one lender, CWCB, on one long term fixed rate loan if the CWCB Board would consider an increase in the existing loan. An advantage of such an arrangement is that there would be no parity analysis needed as the District would have only one lender. The District's cash flow for 2019 is estimated to be approximately \$1,700,000.00 for the year which funds are received through a Maintenance Fund Assessment approved by the supervising District Court and collected along with property taxes by the Treasurer of Pueblo County, Colorado. The annual payment of a loan in the amount of \$23,230,000.00 over a 30 year period assuming a 2.45% interest rate would be \$1,102,489. The District's annual operating costs are under \$200,000.00/year making debt service and operating costs \$1,302,489.00 and leaving approximately \$397,511.00 in additional Maintenance Fund Assessment receipts annually. Please note, the District is making no assumption that an increase in its loan will be granted as we are completely aware of the fact that any decision concerning this matter is in the exclusive province of your Board and then the legislature.

In support of this request for an increase in our loan, I would refer you to the following documents which were submitted to CWCB in support of the original loan application:

Exhibit B-Downtown flood plain map  
Loan Feasibility Study

Should you wish a copy of these documents please let me know and I'll forward them to you. Additionally, I'm submitting with this letter the following documents in support of this request:

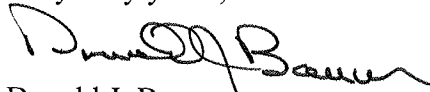
2017 Audit of the District  
2016 Audit of the District  
2015 Audit of the District  
Accountants Compilation Report showing the 12/31/18 financial information for the District.

You will note that the 2017 audit showed Maintenance fund assessment income of \$1,185,441. In 2017 the District requested the supervising District Court to authorize an increase of the Maintenance Fund Assessment the District could assess all property owners in Pueblo County. After public notice and hearing, on April 28, 2017 the Court entered an Order approving an increase in the assessment. The increase was implemented for the assessment in 2018 and resulted in income of \$1,762,392. The District is in the process of having its 2018 Audit

conducted and will submit that Audit as soon as it is completed. Should the income from the Maintenance Fund Assessment fall short, the District has the right to ask the supervising District Court for an increase in the Maintenance Fund Assessment should that ever be necessary. I'm also submitting with this letter a copy of the Motion to Approve the District's 2019 Budget and the Court Order approving the 2019 Budget.

If there is any additional information that would assist the CWCB Board in considering this request for an increase in our loan, please let me know. On behalf of the entire Board of the Pueblo Conservancy District, thank you for your consideration of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Donald J. Banner". The signature is fluid and cursive, with the last name "Banner" being more prominent.

Donald J. Banner  
Attorney for the District