



May 3, 2021

Peg Mason, Contracts Manager  
Colorado Water Conservation Board  
1313 Sherman St. Room 718  
Denver, CO 80203

Via E-Mail: [peg.mason@state.co.us](mailto:peg.mason@state.co.us)

Re: CWCB Loan Contract CT2021-2039  
Acceleration Clause Amendment Request

Dear Ms. Mason:

The Windy Gap Firming Project Water Activity Enterprise (Enterprise) holds the above referenced Loan Contract as part of the Windy Gap Firming Project's (WGFP) pooled financing program to finance construction of the Chimney Hollow Reservoir in Larimer County. The pooled financing program includes senior WGFP Financings issued by the Enterprise and this subordinate CWCB loan.

The Enterprise is in the process of developing the Offering Statement for the senior financing in preparation for a summer 2021 bond sale. Through that process, our underwriter has identified the acceleration clause found in Section 19.A.i.b and Appendix 3 (Promissory Note) Paragraph 7 of the Loan Contract as being atypical and problematic for a junior lien debt instrument. We have been advised that the contract could presently be read and interpreted to permit the ability for the subordinate loan to accelerate upon any instance of payment default and hurdle any senior lien bonds in order of payment. It is our desire to clarify and eliminate any possible misinterpretation from both rating and investor analysts by amending the contract with language consistent with the subordinate nature of the CWCB loan.

Our request is to amend the Loan Contract as shown below. (Original text is in *italics* and proposed text is in blue underline.)

**Section 19.A.i.b:**

So long as no other WGFP Financings issued as senior lien indebtedness are then outstanding, d~~Declare~~ the entire unpaid principal amount of the Promissory Note, accrued interest, and late charges, if any, then outstanding immediately due and payable. In accordance with the Pledge of Revenues as defined in the Resolution, set forth in the Security Agreement, and described in Section 11 of the Loan Contract, acceleration of payments under default is only committed if there are no outstanding WGFP Financings issued as senior lien indebtedness to which this Contract is expressly subordinate and junior.

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**Appendix 3 (Promissory Note) Paragraph 7:**

*If any annual payment is not paid when due or any default under the Contract or the Security Agreement securing this Promissory Note occurs, the CWCB may ~~declare the entire outstanding principal balance of the Note, all accrued interest, and any outstanding late charges immediately due and payable, exercise its remedies under Section 19 of the Loan Contract or the Security Agreement, and the indebtedness shall bear interest at the rate of seven percent (7%) per annum from the date of default. The CWCB shall give the Borrower written notice of any alleged default and an opportunity to cure within sixty (60) days of receipt of such notice before the Borrower shall be considered in default for purposes of this Promissory Note. In accordance with the Pledge of Revenues as defined in the Resolution, set forth in the Security Agreement, and described in Section 11 of the Loan Contract, acceleration of payments under default is only committed if there are no outstanding WGFP Financings issued as senior lien indebtedness to which this Contract is expressly subordinate and junior.~~*

Please advise if this request is acceptable, if alternate language preferred, or if further discussions are necessary. In communication with Mr. Russell, Finance Section Chief, we understand a contract amendment fee in the amount of \$500 will be charged to the Enterprise in making this request. I have directed my staff to work with CWCB to send this payment amount concurrent with this request letter.

Thank you for your consideration of this request.

Sincerely,

  
Jeff Drager, P.E.  
Director of Engineering

ec: Kirk Russell, P.E., Finance Section Chief, [kirk.russell@state.co.us](mailto:kirk.russell@state.co.us)  
Cole Bedford, P.E., Project Manager, [cole.bedford@state.co.us](mailto:cole.bedford@state.co.us)