



COLORADO

Colorado Water Conservation Board

Department of Natural Resources

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TO: Colorado Water Conservation Board Members

FROM: Kirk Russell, P.E., Finance Section Chief

DATE: July 19-20, 2023 Board Meeting

AGENDA ITEM: 11b. Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc.
Loan Delinquency Action

Staff Recommendation

Direct staff to issue a Notice of Default to Two Rivers Water & Farming Company (f/n/a Two Rivers Water Company) and Two Rivers Farms F-2, Inc. (f/n/a Two Rivers Farms F-2 LLC) should they fail to make the delinquent 2023 annual loan payment for Loan Contract #C150328A (CT2015-164) by September 1, 2023. The Notice of Default will inform the Borrower that failure to make the payment within a thirty-day cure period will result in the entire outstanding loan principal balance, interest and late fees becoming immediately due and payable.

This recommendation is consistent with CWCB Policy #3 “Loan Delinquency, Loan Restructuring and Collection” regarding the 180-day “past due” period before taking action to cure a loan delinquency.

Background

This original loan contract for \$1.2M was approved by the Board in November 2011 at 2.5% for 20 years. The loan was primarily used for the rehabilitation of the Orlando Reservoir dam and ditch headgate near Walsenburg, Colorado. The construction was completed and the loan was put into repayment in March 2013. Of the ten annual payments made which have come due since the loan repayment period began, six have been late and assessed a 5% late fee of \$3,800.34 each. The last payment due on March 1, 2022 was made on time. The March 1, 2023 annual payment of \$76,006.78 is 140 days late as of this meeting date.

Recent Communication as of July 7, 2023:

- On February 13, 2023, staff received a phone call from Greg Harrington, Two Rivers CEO, describing the status of the Company and its legal complications.
- On March 21, 2023, staff sent a letter via email and US mail notifying the Borrower that the payment was past-due. The letter also indicated a 5% late fee would be assessed if payment was not received by April 1, 2023.
- On April 10, 2023, staff sent a letter via email and US mail indicating the annual payment was over 30 days late and the 5% late fee (\$3,800.34) was assessed bringing the payment due to \$79,807.12.
- On May 10, 2023, staff sent a letter via email and Certified US mail indicating the annual payment was over 60 days past due and failure to pay within the Board’s Policy may result in Board issuing a Notice of Default. This letter was returned undeliverable by the US Postal Service in June.

Next Steps and Foreclosure Preparation:

On September 1, 2023 the late payment will be over 180 days past due. If payment is not made within the thirty-day cure period, staff is requesting Board to approve the issuance of a Notice of Default.

This Notice will require payment within 30 days and failure to do so will result in the Promissory Note to be declared in default and the entire outstanding principal balance, accrued interest and late charges to be due immediately. This amount due shall bear an interest of 7% per the Promissory Note included as part of the loan contract:

Paragraph 8 of the Promissory Note says:

If any annual payment is not paid when due or any default under the LOAN CONTRACT or the Security Instruments securing this 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, and the indebtedness shall bear interest at the rate of 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 thirty (30) days of receipt of such notice before the BORROWER shall be considered in default for purposes of this Promissory Note.

If the borrower fails to cure the default, additional actions will be necessary by the CWCB Board regarding foreclosure at a future meeting.