



## 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  
Lauren Miremont, Finance Manager

**DATE:** September 16-17, 2020, Board Meeting

**AGENDA ITEM:** 9a. Loan Delinquency Action - Two Rivers Water & Farming Company, and Two Rivers Farms F-2, Inc.

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#### Staff Recommendation:

Staff recommends the Board approve the following schedule/actions towards collection and foreclosure on loan contract C150328A (CT2015-164) delinquency if no resolution by the Borrower has been reached by the following dates:

- October 1, 2020 - Notify Borrower via certified mail of Board's intent to proceed with this collection and foreclosure schedule.
- November 2020 Board Meeting - Borrower's last opportunity to address the Board prior to the Board's decision to declare the entire loan obligation paid in full.
- December 1, 2020 - staff will notify the Borrower that the entire loan obligation is due by March 1, 2021. This includes outstanding loan balance and late fees payable by March 1, 2021 in the amount of \$637,146.97 (\$621,637.50 Principal + \$3,800.54 Late fee + \$11,708.93 Accrued Interest).
- January 2021 Board Meeting - Staff and the Attorney General's Office will present options available for foreclosure proceedings if loan is not paid in full by March 1.
- March 1, 2021 - CWCB will foreclosure on the loan as directed by the Board.

#### Introduction:

The CWCB entered into a loan contract (C150328A) with Two Rivers Water Company, TRWC, Inc., and Two Rivers Farms F-2, LLC. on March 5, 2012 for the Orlando Rehabilitation Reservoir Project. Security for this loan includes a lien on the water rights in Orlando Reservoir #2, the Orlando Reservoir #2 itself (Huerfano County), and 1,200 acres of irrigated farm land located in Pueblo County.

An amendment to the loan contract was signed on September 15, 2015 which released a portion of the farm land in consideration of a principal payment of \$210,000. The amendment also updated the borrower's name to Two Rivers Water & Farming Company (formally known as Two Rivers Water Company), and Two Rivers Farms F-2, Inc. (formally known as Two Rivers Farms F-2, LLC).

Per CWCB Policy #3, “staff will refer all loans to the Board, for which any individual loan payment is at least 180 days past due with a specific recommendation.”

The Borrower’s March 1, 2020 loan payment for \$76,006.78 is currently over 180 days past due.

**Background:**

The Orlando Rehabilitation Reservoir Project was substantially completed March 1, 2013 and the loan was put into repayment. After two years of on-time payments (2014 & 2015) of \$76,006.78, the following five years of payments were late. The CWCB charged a late payment fee of 5% (\$3,800.34) per CWCB Policy #3 in each instance. The annual payment and late fee were ultimately paid in 2016, 2017, 2018 and 2019. In some years CWCB allowed the borrower to make incremental payments to bring the loan into compliance. Per Policy #3, reminder notices were sent accordingly each year.

For the payment that was due on March 1, 2020 reminder notices were sent in accordance with policy, on January 15, 2020, April 1, 2020, and May 2, 2020. On March 31, 2020 CWCB Finance Manager, Lauren Miremont (L.M.), emailed all known contacts for Two Rivers Water & Farming Co. and received contact information for the new CEO, Greg Harrington. On that date, Mr. Harrington acknowledged the amount due and indicated that the company was having trouble receiving funds due to the COVID-19 crisis but hoped to have it resolved within the week. No follow up was received from Mr. Harrington or the Company in the following two months. On June 1, 2020, L.M. reached out to Mr. Harrington via email to communicate that a late fee had been assessed per CWCB Policy #3 and that if payment was not received by September 1, 2020, the situation would be elevated to the CWCB Board for action. On June 3, 2020, Mr. Harrington responded that the company had moved offices to 129 W. B Street, Pueblo, CO 81003 and that the company's funds were still on hold due to the pandemic but hoped to be able to make payment the following week.

On June 12, 2020, L.M. emailed Mr. Harrington to follow up and never received a reply. On August 17, 2020, L.M. emailed Mr. Harrington again to follow up outlining payment due, informing him that staff would be making a recommendation as to how to address the delinquent loan payment at the September board meeting, and requesting an update on the Borrower’s ability to pay, and received no reply. That same date a letter outlining the same information was sent via certified mail to Mr. Harrington at the new address to which CWCB has not received a signature confirmation. CWCB is not aware of any effort that has been made by Mr. Harrington or the company to communicate with the CWCB or make arrangements to pay any amount due.

**Policy/Contract Language:**

According to CWCB Policy # 3:

*The board shall review all loans for which annual payments are 180 days, or more, past due. The Board's review shall include an examination of the Project Sponsor's payment history, Project Sponsor statements regarding extenuating circumstances and reasons for the delinquent or non-payment, and the consideration of problem solving opportunities, including referral for collection.*

*Staff will refer all loans to the Board, for which any individual loan payment is at least 180 days past due with a specific recommendation for one of the following actions,*

*depending on the individual circumstance: deferral of the loan payment, restructuring the loan terms, assessment of an accelerated loan interest rate, accelerate the loan.*

According to the loan contract terms:

*Remedies For Default Include but are not limited to 1) Declare the entire principal amount, accrued interest, and late charges, if any, then outstanding immediately due and payable 2) Exercise its rights under any appendices...including but not limited to the Promissory Note, Security Agreement and/or any instrument securing collateral 3) Any other appropriate action*

The Borrower is currently 180 days delinquent in their annual payment. Staff has engaged the Attorney General's Office to advise staff on the steps available, and staff will continue to update the Board with its progress in correcting this delinquency.

**Cucharas #5 Dam:**

In addition to the loan delinquency described in this memo, the Two Rivers Water & Farming Company has shown difficulty staying current with a court-ordered monthly payment of \$27,421.82 to DWR related to DWR's efforts to remove the Cucharas #5 Dam's safety hazard. On September 3, 2020, the Company submitted payment of \$115,171.64 to avoid a contempt of court citation by the Attorney General's Office. This money will reimburse CWCB's Emergency Dam Fund, which was used to remove this hazardous dam.

cc: Greg Herrington, Two Rivers Water & Farming Company  
Jennifer Mele, Colorado Attorney General's Office

Attachment: CWCB Policy #3

POLICY NUMBER: 3

SUBJECT: **CONSTRUCTION FUND AND SEVERANCE TAX TRUST FUND PERPETUAL BASE FUND LOAN DELINQUENCY, LOAN RESTRUCTURING AND COLLECTION**

EFFECTIVE DATE: October 1, 1999

REVISED DATE: November 16, 2017

POLICY: The Colorado Water Conservation Board (CWCB) shall review all loans for which annual payments are 180 days, or more, past due. The Board's review shall include an examination of the Project Sponsor's payment history, Project Sponsor statements regarding extenuating circumstances and reasons for the delinquent or non-payment, and the consideration of problem solving opportunities, including referral for collection.

PURPOSE: To provide the Board with information regarding past due loan payments. This policy will allow Project Sponsors a reasonable time to make late loan payments, restructure their existing loan or develop other financial solutions to recover from periods of economic difficulties, drought, flood, or other hardships beyond their control. This policy will also define how loans will be referred to collections.

APPLICABILITY: This policy and procedure applies to ALL current and future loans from the CWCB Construction Fund and the Severance Tax Trust Fund Perpetual Base Fund.

PROCEDURE: The statutes and provisions in the loan contract and contract documents provide the Board several options in dealing with delinquent loan payments, including, but not limited to, the following:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of a revised loan interest rate
- Assessment of a late charge fee
- Forgive all or part of the loan
- Debt referral to the State Central Collection Agency

At every Board meeting, staff will give the Board a comprehensive delinquency list or Loan Aging Schedule. The report will include a list of loan payments that are past due and the date payment was due.

To initiate loan re-payment, staff will send a reminder letter to each Project Sponsor 30 days prior to the loan payment due date.

In the event of a delinquency, staff will send a reminder letter to each Project Sponsor every 30 days. A late fee of 5% of the current annual payment may be assessed for loan payments not received within 60 days of the due date.

Staff will contact the Project Sponsor by phone concerning a loan payment that is 60 days past due to remind the Project Sponsor of its debt obligation and to determine the extenuating circumstances preventing the Project Sponsor from meeting that obligation. Staff and the Project Sponsor will then agree upon an alternate date by which the payment will be made. If the Project Sponsor makes the payment as agreed all late fees associated with the delinquency may be waived at the discretion of the Director or his designee.

Staff will refer all loans to the Board, for which any individual loan payment is at least 180 days past due with a specific recommendation for one of the following actions, depending on the individual circumstance:

- Deferral of the loan payment
- Restructuring the loan terms
- Assessment of an accelerated loan interest rate
- Accelerate the loan

If the delinquency continues, and is at least one year past due, staff will recommend that the Board either:

- Refer the bad debt to Central Collections and/or the Attorney General's Office to take appropriate legal action against the Project Sponsor
- Forgive all or part of the loan
- Continue to work with the Project Sponsor towards a successful re-payment schedule.