



**Washington State  
Public Works Board**

**Title:** LOAN DEFAULT POLICY

**Division:** Public Works Board

**Applies to:** PUBLIC WORKS BOARD

**Laws:** WAC 399

**Effective date:** December 2, 2008

**Approval Chairman:** \_\_\_\_\_

\_\_\_\_\_ **Date**

**Policy**

**Procedure**

**POLICY STATEMENT**

Public Works Board (PWB) established this policy to address the issues of loan deferral, restructuring, termination and delinquency. This policy will go into affect upon Public Works Board adoption.

**POLICY SCOPE**

A borrower, which has experienced financial difficulties caused by events beyond their control, may request deferral of the loan payment by contacting the Public Works Board (PWB) staff or Contracts Administration Unit (CAU) staff and request a deferral of the loan repayment. The PWB has the authority to amend the loan agreement with the borrower.

The PWB when determining whether to make a change in loan terms shall take into consideration the following criteria:

1. Sound fiscal management of jurisdiction,
2. Significant loss of revenue that supports the system for which the loan was made, or has experienced severe fiscal distress caused by a natural disaster,
3. Established rates that are adequate to provide for operation and debt service,
4. Provide current financial statements (balance sheet and income statement),
5. Unable to obtain financing from other lenders, and
6. Organized as a local government or recognized as non-profit.

The PWB may amend the agreement to incorporate one or more of the following:

1. Temporarily defer loan payment and/or late fee for up to 90 days.
2. Defer principal payment and extend the length of the loan not to exceed the remaining life of the asset,
3. Reduce interest rate,
4. Amend loan agreement to place PWB in the senior position to future debt obligations of the jurisdiction,

Should the PWB amend an agreement to include the above changes, the following conditions may be required:

1. Provide collateral equivalent to the value of the loan
2. Provide annual financial statements (balance sheet and income statement).
3. If the loan balance is over \$500,000 an independent audit of a jurisdiction's financial statements.

In addition, the borrower may be restricted from future PWTF or SRF loans until such time as they can demonstrate financial and managerial capacity.

#### Delinquent Loan Management

PWB loan agreements require payment within thirty days of the due date of the loan payment as described in the agreement. A loan is delinquent when a borrower fails to make full payment within thirty days of the due date.

A borrower failing to make a payment in accordance with the terms of the loan agreement agreement, will be sent a notice of delinquency requesting payment before the thirty first (31<sup>st</sup>) day following the due date. The borrower will be sent a new billing statement for the outstanding payment due plus a one (1) percent penalty of the payment amount. PWB staff or CAU staff will contact the borrower and document the reason for delinquency.

A borrower failing to make payment by the sixty first (61<sup>st</sup>) day following the due date, will be sent a Second Notice of Delinquency requesting payment before the ninety-first (91<sup>st</sup>) day following the due date. The borrower will be sent a new billing statement for the outstanding payment due plus an additional one (1) percent penalty of the payment amount.

A borrower failing to make payment by the ninety-first (91<sup>st</sup>) day following the due date will be sent a Final Notice of Delinquency requesting payment before the one hundred and twenty- first (121<sup>st</sup>) day following the due date. The borrower will be sent a new billing statement for the outstanding payment due plus an additional one (1) percent penalty of the payment amount.

#### Loan Default

When a borrower has not received a loan deferral or made a payment within 120 days of the due date, the PWB may impose such remedy as provided for in the loan agreement.



Washington State  
Public Works Board  
Post Office Box 48319  
Olympia, Washington 98504-8319

## PUBLIC WORKS BOARD MEETING NOTES

December 2, 2008

Radisson Hotel (SeaTac, WA)

### Board Members Present

Dennis Hession – Chair  
Pete Capell  
Roger Flint  
Rebecca Francik  
Kathryn Gardow  
Mark Hoppen  
Kathleen Keene  
Dennis Kendall  
Darlene McHenry  
Don Montfort  
Merrill Ott  
Tim Simpson

### Board Members Absent

Steve Stuart

### Staff Members

Ann Campbell  
Terry Davis  
Steve Dunk  
Leslie Hafford  
Heather Youckton

**Guests Present:** Kristin Bettridge, Department of Health; Clare Billings, Community, Trade and Economic Development; Jan Marie Ferrell, Community, Trade and Economic Development; John Kounts, Washington Public Utility Districts Association; and Karen Larkin, Community, Trade and Economic Development.

### BOARD ADMINISTRATION

- a) Call to Order – Dennis Hession called to order – 8:34 a.m.
- b) Introductions – Board, Staff, Guests, and Visitors
- c) Approve the agenda. The PWeb presentation will be rescheduled. November 4, 2008, Board meeting minutes will be brought back to the Board at the January Board meeting.
  - **Action taken.** Pete Capell moved to approve the agenda as presented above. Tim Simpson seconded the motion. Motion passed. (Vote 9-0. Yes – Capell, Flint, Francik, Hoppen, Keene, Kendall, McHenry, Montfort, and Simpson. No – None.)

### LOAN AGREEMENT AMENDMENTS

- a) Clare Billings reviewed the extension requests listed on page 9. These projects are not complete and the client has requested an extension. Staff recommends extending the contract project closeout dates as presented. The projects listed have been evaluated through staff peer review. DOH is in agreement for the five DWSRF contracts listed.
  - **Action taken.** Tim Simpson moved to approve extending the project closeout dates as presented on page 9 for the following seven contracts: King County, PW-01-691-033; City of Shoreline, PW-01-691-056; Juniper Beach WD, 02-65102-022; Town of Ione, 03-65103-022; City of Leavenworth, 04-65104-019; Pioneer Service Co. Inc., 04-65104-025; and Stevens County PUD #1, 01-65101-034. Rebecca Francik seconded the motion. Motion passed. (Vote 10-0. Yes – Capell, Flint, Francik,

Gardow, Hoppen, Keene, Kendall, McHenry, Montfort and Simpson. No – None.  
Recusal – Flint recusal from King County.)

- b) Clare Billings reviewed the other contract amendments listed on page 11. The five contracts listed are from November 2008. The three DWSRF contract amendments were approved by the Department of Health.
- c) Clare Billings provided a handout for projects that have been completed and closed out for the time period of June 1, 2008 – November 30, 2008, since under the Contracts Administration Unit (CAU). Of the twenty three contracts listed, twelve were completed on time. Discussion followed on the five databases being currently used by the CAU.

## FINANCING OPPORTUNITIES

- a) Ann Campbell reviewed the PWTF Non-construction resources currently available as outlined on page 15. She reviewed the options for moving the resource allocation in the non-construction loan programs. The Board may move the resources again at a later date if the Board sees it to be necessary. Terry Davis stated \$10 million of the original PWTF Non-construction allocation was used for the \$10 million grant program.
  - **Action taken.** Pete Capell moved to approve the staff recommendation of moving \$2 million from the Planning loan program and \$1 million from the Emergency loan program to the Pre-construction loan program. Darlene McHenry seconded the motion. Motion passed. (Vote 11-0. Yes – Capell, Flint, Francik, Gardow, Hoppen, Keene, Kendall, McHenry, Montfort, Ott, and Simpson. No – None.)
- b) Ann Campbell presented the PWTF Non-construction financing opportunities as listed on page 18. Staff did not receive any Planning or Emergency loan applications. Four Pre-construction loan applications were received. The City of Centralia is not in compliance with GMA. In addition, the city stated in the application they had no audit findings in the last five years. When this question was verified, the city did have audit findings. Staff spoke with the city and there was some internal miscommunication. Staff discussion concluded that if applicants mistakenly responded to questions and misrepresented the jurisdiction, the application would be rejected for the application cycle. For PWTF Non-construction programs the jurisdiction may reapply the following month. For PWTF Construction applications, the jurisdiction may not be able to reapply for two years depending on the biennial appropriation cycles set by the Board. Staff needs direction from the Board on this issue. The Board continued discussion regarding misrepresentation by jurisdictions, intentional or not. The Board recommended the staff make it clear to clients that the questions will be checked. The Board did not come to a consensus on whether to treat as a mistake and allow the client to fix it or to reject the application. The Board requested staff bring a recommendation back to the Board for applicants in question and the Board will make the determination to accept the application or to reject it.
  - **Action taken.** Tim Simpson moved to approve the PWTF Pre-construction loan applications for the following jurisdictions: City of Uniontown in the amount of \$140,000; Startup Water District in the amount of \$200,000 and Point Roberts Water District #4 in the amount of \$66,385. Kathleen Keene seconded the motion. Motion passed. (Vote 11-0. Yes – Capell, Flint, Francik, Gardow, Hoppen, Keene, Kendall, McHenry, Montfort, Ott, and Simpson. No – None.)

## BOARD ADMINISTRATION

- a) Executive Committee Update: Dennis Hession stated the committee discussed the City of Roy status. The committee also discussed the Executive Director position. Dennis

previously talked to Juli Wilkerson regarding the hiring process and moving forward to find an Executive Director for the Public Works Board. He asked Juli about the rumor of the Governor lifting the hiring freeze, but there has been no update regarding a hiring lift. Dennis maintained the position is to move forward and if necessary to submit an exception request to hire an Executive Director. They postponed the conversation to a later date pending information regarding the lift of the hiring freeze. The committee discussed briefly the Puget Sound Partnership Action Agenda. Darlene McHenry requested Diana Gale attend a Public Works Board meeting to provide an update on the PSP Action Agenda.

- b) No other committee updates were provided.
- c) Ann Campbell stated the PWB Informational Brochure and the 2009 Legislative Report will be available following the Board meeting.
- d) Darlene McHenry requested information on the status of the Public Works Board office move from the Evergreen Plaza Building to the Davis Williams Building. She stated the PWB installed a fiber optic line in the Evergreen Plaza building. She asked what will happen to the line once the Public Works Board moves out of the building. She also asked for clarification on the rent reduction and savings.
  - Terry Davis stated the fiber optic line was run from the Davis Williams building to the Evergreen Plaza building when the Public Works Board moved into the building. Currently the line is being used by other agencies located in the Evergreen Plaza building and CTED will continue to rent the line to the other agencies.
  - Terry Davis stated PWB has not received an invoice for rent for the Davis Williams building. It appears that rent will be slightly higher than the current rent as utilities are not included. Dennis Hession stated there will be overall savings for CTED and for staff to keep the Board apprised.
- e) Dennis Hession provided an update on the Infrastructure Board workgroup. So far they have met twice. They will be meeting following the Public Works Board meeting. A draft OFM Infrastructure Assistance Programs Review and Implementation Plan handout was provided. Heather Moss has been participating in the Infrastructure Board workgroup. The workgroup discussed strategic planning for infrastructure statewide. Dennis stated it is critically important to have other people in the room for that discussion, including Department of Health and Department of Ecology. The workgroup is working on indentifying needs and priorities and then finding ways to recommend implementation of a plan. The workgroup has a list of the ten most important things. Dennis stated CTED has put the consolidation plan on the shelf and are starting at square one. The workgroup is not trying to find an alternate plan to the consolidation. Dennis stated the committee has no official authority, but is rather a number of individuals trying to find solutions and will never go beyond making recommendations.
  - Don Montfort stated his feeling is that CTED's aim is still to bring PWB and other CTED programs under CTED supervision and to supervise staff. Don stated he has maintained PWB is independent with its own staff and that CTED provides administrative services. Don asked the Board to tell him if they want him to continue to represent the Board with this view or otherwise. Dennis stated that the Board's view is the Board directs staff, how they might be structured, and how to provide customer service and implementation of the program. He stated this is the responsibility of the Board. Don stated that in conversations with Karen Larkin they disagree on the issue of the staff and he stated Karen maintains that PWB is a program of CTED. Karen stated that PWB is a program of CTED like CERB and others. She stated the RCW states that CTED shall provide staff to the Board. Don

stated that his impression is that the Board has had a position of independence and those decisions having to do with staff, location and supervision are retained by the Board. The Board supported Don's opinion and stated that without clarity of the RCW, the issue of staff supervision is creating a problem and friction for staff and it needs to be resolved in order to move forward. Tim Simpson stated that the workgroup needs to figure out what is it trying to solve; what is the problem? Tim stated that everyone in the workgroup agrees that there are improvements that can be made by all the programs; however, it doesn't have to be a huge program change. Dennis stated the directive from the legislature is to do something to address the infrastructure issue, but one of the real issues is the lack of money and resources to meet infrastructure needs. Dennis stated that all the efficiencies they can create would not provide resources to fit the state's need.

- Darlene McHenry stated PWB is an independent Board and is only housed in CTED. The staff issue needs to be resolved in order to be able to address the statewide infrastructure issue. Darlene stated that the Board and CTED need to work together in order to lead the state in a new era. Darlene stated the RCW is up to interpretation and thus far, the agency and Board have differing views; however, there is a MOU to help define it. Don Montfort stated the MOU is a memorandum of understanding for that time and it is not binding.
  - \* Jan Marie Ferrell stated that Juli Wilkerson did the MOU in good faith, that CTED has offered to get an AG opinion, and that Juli wants to work with the Board. Jan Marie stated that Juli has the appointing authority and does not want to pull everything completely away from the Board. Jan Marie stated that the agency has been in compliance with the MOU and that the appointing authority has been given to the agency director and who can then delegate. She stated the Executive Director was recently appointed to the Assistant Director level with Kelly Snyder and that it had never been done before. Jan Marie stated that prior to Kelly, the Executive Director had to go through an Assistant Director to take personnel action.
  - \* Mark Hoppen stated that the issue is everything in between the hiring and firing. He stated the Board believes the agency has the authority to hire and fire but not to supervise and this matter is getting in the way of collaboration.
  - \* Karen Larkin stated that she thought the workgroup agreed to put the staff issue aside and agree to disagree and to find common ground in order to identify issues and work together to create programs, whether structural and involve staff, or process and involve documents; and that we would come together as a team and focus on improvements in the systems
  - \* Rebecca Francik stated that she understands improving systems and she agrees with that. She said she agrees that there is not enough money to provide the infrastructure needs of the state. She stated that if CTED moves to consolidate and spread the PWTF money in order to provide a stable gap for other programs then it would mean less projects for PWTF clients. Rebecca stated that PWB just doesn't have enough money as it is.
  - \* Karen Larkin stated that she means no disrespect by stating that PWTF is a program in CTED. She stated that CTED is not proposing and never has proposed to change the nature of the fund and to redirect the money. She stated that would take a legislative process and she does not want to propose a legislative change. She stated that she would like to be able to help the agency better support the fund and customers who use the fund. Karen requested the

Board look at the issue from a customer standpoint as most customers use multiple funding sources.

## **PROGRAM ADMINISTRATION**

- a) Federal Stimulus Update: Kristin Bettridge discussed the federal stimulus discussions. The most recent economic stimulus, which died, projected the iteration to be \$6.5 million for clean bill and an additional bill for drinking water. She stated the same rules would apply, except that there would be no state match requirement on this set of money; however, it would have to go through the same rules and processes. Once the grant is approved the jurisdictions will have 120 days to execute the contracts. DOH staff has been working with PWB staff to identify projects that may meet guidelines and were not able to be funded in the previous list.
- John Kounts stated the jurisdictions have concerns on permitting requirements and how to mesh with the desire to get the shovels in the ground.
  - DOH staff will continue to coordinate with PWB staff and provide updates to the Board.
- b) CTED Director's Office Update: Jan Marie Ferrell stated CTED is continuing work on the budget. CTED needs to make \$7 – 8 million in cuts by the end of the fiscal year. Next biennium is projected to be significantly worse. CTED's reduction is anticipated to be \$30 million in addition to the reduction from this biennium. Jan Marie stated the Governor's budget should be out by December 22.
- Jan Marie stated the agency is looking for cuts everywhere. Many state agencies will be doing layoffs and this can affect Board staff through the ripple effect. Some agencies have already begun layoffs prior to Thanksgiving.
  - Jan Marie stated Julie Anderson is working in the discussions for a State stimulus package. Jan Marie stated Julie has received great support from staff, especially Cecilia Gardener. Jan Marie commended Cecilia's participation.
  - Jan Marie provided an update on GCLM. Jan Marie stated they are in the midst of contract negotiations and amendments to the contract. There is going to be a delay and the committee is talking about what the amendment will look like. So far the interim previews have been disappointing and they still need to receive the first deliverable. The first deliverable is anticipated to be deployed in the spring. The legislature is extremely interested in GCLM and looking forward to its completion.
  - Dennis Hession stated that he has been involved in discussions regarding CAU and their staffing needs. Bruce Lund has been temporarily with CAU from August 2008 through December 2008. PWB's original investment into CAU was one FTE. Dennis stated there is disagreement on whether PWB investment should exceed that. Dennis stated there is an opportunity to fill the temporary position with another person, currently not with PWB, and continue to pay for the FTE for six months. The conversation is to have an evaluation at the end of the six months and decide to what extent to provide services for the future. Dennis stated that Jan Marie initially stated that if CAU is not working, the agency will get rid of it. Dennis stated that the CAU needs to be viable and effective for PWB and they need to talk about the criteria to use to evaluate this. Terry Davis provided an explanation on how to fund the FTE for six months. Terry stated the agency has excess FTEs due to the hiring freeze.
- \* Jan Marie Ferrell stated the person they are looking at to fill the temporary CAU FTE can go to the CAU upon return from a WMS position. She stated if they put this person within the agency, they wouldn't bump a current PWB staff person.

- \* Terry Davis stated there has been a significant learning curve for CAU with using multiple databases and learning several programs; the CAU still needs extra support.
  - \* Dennis Hession stated there needs to be criteria fairly set to evaluate CAU. Jan Marie Ferrell stated the criteria will come from the performance measures shared with the Board from the beginning. The performance measures will be specific in what they thought could be achieved in a year.
  - \* **Action taken.** Tim Simpson moved to approve PWB funding an FTE to CAU for a six month period from January 1, 2009 through June 30, 2009. Dennis Kendall seconded the motion. Motion passed. (Vote 11-0. Yes – Capell, Flint, Francik, Gardow, Hoppen, Keene, Kendall, McHenry, Montfort, Ott and Simpson. No – None.)
- c) PWB Staff Update: Terry Davis stated the PWB office has been relocated to the Davis Williams Building.
- d) 2009-2011 Loan Allocation: Terry Davis stated the agenda item will be moved to the January 2009 Board meeting.
- e) Readiness to Proceed: Leslie Hafford stated the board requested at the November Board meeting for the discussion to come back to the December Board meeting. Leslie reviewed the memo on page 33-34. Staff recommends shortening the timelines (without changing the WAC) for scope of work development, contract execution and project start date as identified in Options 1, 2 and 3. The Board discussed whether the timeline is doable for jurisdictions. Staff expressed concern for jurisdictions not doing any work in 90 days. Board expressed concern for jurisdictions that need council approval and may only meet once a month.
- **Action taken.** Kathryn Gardow moved to approve the staff recommendation as listed on pages 33 and 34 to shorten the timelines for the scope of work development, contract execution and project start date as identified in Options 1, 2 and 3. Pete Capell seconded the motion. Motion passed. (9-2. Yes – Capell, Flint, Francik, Gardow, Keene, McHenry, Montfort, Ott and Simpson. No – Hoppen and Kendall.)
- f) Contract Boilerplate approval: Terry Davis stated language in the boilerplate is affected by the motion above regarding readiness to proceed. Staff will make the necessary changes.
- **Action taken.** Merrill Ott moved to approve the PWTF Emergency loan contract, Planning loan contract, and Preconstruction loan contract with necessary changes due to the motion above. Pete Capell seconded the motion. Motion passed. (Vote 11-0. Yes – Capell, Flint, Francik, Gardow, Hoppen, Keene, Kendall, McHenry, Montfort, Ott and Simpson. No – None.)
  - Dennis Hession stated the contract sections are done in alpha order and does not flow easily. He stated in efforts to create uniformity for clients dealing with multiple CTED contracts, it will create readability but it is unnecessarily complicated and complex. Dennis Hession commended Terry Davis and staff for the work done with CTED on the contracts.
- g) City of Roy: Leslie Hafford provided an update for the City of Roy as outlined on page 123. The city has been working with Association of Washington Cities (AWC) and the State Auditor's Office (SAO). Both AWC and SAO came up with the same conclusion: the city needs to increase water rates in order to meet their current budget needs. The City of Roy will be attending the January Board meeting to provide an update to the Board.



- h) **Default Policy:** Leslie Hafford summarized the draft loan default policy as outlined on pages 129 – 130. Terry Davis stated the default policy would not change the loan conditions due to the analysis and the Board would decide events beyond their control as stated in first paragraph under Policy Scope on page 129.
- **Action taken.** Tim Simpson moved to approve the Loan Default Policy as presented. Merrill Ott seconded the motion. Motion passed. (Vote 11-0. Yes – Capell, Flint, Francik, Gardow, Hoppen, Keene, Kendall, McHenry, Montfort, Ott and Simpson. No – None.)
  - Staff will contact the City of Roy on the adopted policy.
- i) **PWTF Loan Terms:** Leslie Hafford reviewed the memo on page 131 clarifying the loan terms changes that have been made to the PWTF loan programs. No action was taken.
- j) **Records Retention Policy:** Terry Davis stated the policy will be moved to the January Board meeting for action. The Board will contact Terry with any questions or comments.
- k) **PWTF Budget Update:** The budget is on target. The Board will contact Terry with any questions or comments.
- l) **Technical Assistance:** Steve Dunk provided an update on the technical assistance program. As of November 26, 2008, staff has received three applications and several requests for information. Staff is currently working with four additional jurisdictions to gather more information for completion of their applications. Staff will continue to work with other agencies in order not to duplicate efforts. Dennis Hession recommended staff communicate with Heather Moss and provide a status report on what PWB is doing with technical assistance.
- m) **Legislative Session:** Cecilia Gardener will be meeting with Juli Wilkerson, Marie Sullivan, and Dennis Hession to determine a plan for addressing PWB needs for legislative session.
- Kathleen Keene stated she will be having weekly meetings to discuss the upcoming legislative committee meetings for the week. She stated it may be helpful to coordinate efforts with the Executive Committee.
- n) **Puget Sound Partnership Update:** Leslie Hafford summarized the memo highlights listed on pages 145 – 148. Dennis Hession stated that PWB is a player in the action agenda of PSP. PWTF has been referenced to as leverage, but what does that mean? Dennis recommended an adhoc committee be formed with members: Roger Flint, Mark Hoppen, and Kathryn Gardow, in order to give perspective to the Board on interaction with PSP as it relates to the Board and the Trust Fund. Dennis stated it is important to devise a plan to be more involved with PSP. Dennis recommended the Board be engaged with PSP and be a part of the conversation. Staff will set up a committee meeting.
- John Kounts stated there needs to be continued communication and coordination during session with the Board, staff, and stakeholders. John stated he appreciated Kelly Snyder's weekly emails outlining the issues of which the staff is aware. Dennis Hession stated last year staff monitored every bill and provided a status report and summary to the Board. He anticipates this year to be the same.

## **ETHICS REVIEW**

- a) Kathryn Gardow provided an Ethics review PowerPoint presentation. Staff can be contacted for an electronic or hard copy of the presentation.

## **INFORMATION AND OTHER ITEMS**

- a) No other items were presented.

**Meeting adjourned at 12:35 p.m.**

**Next Meeting: January 13, 2009, at 8:30 a.m. – Washington PUD Association, 212 Union Ave. SE, Second Floor, Olympia, WA 98501, (360) 741-2675.**