California Debt Limit Allocation Committee (CDLAC)

Jesse Unruh Building
915 Capitol Mall, Room 587
Sacramento, CA 95814

November 18, 2009 Meeting Minutes

1. Call to Order and Roll Call

Bettina Redway, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 1:36pm.

Members present were Thomas Sheehy for Governor Arnold Schwarzenegger, David O'Toole for State Controller John Chiang, and Bettina Redway for State Treasurer Bill Lockyer.

Advisory Members present were Steven Spears of Cal-HFA and Elliott Mandell for Lynn Jacobs of Housing and Community Development.

The chairperson declared a quorum.

2. Approval of the Minutes of the September 23, 2009, Meeting

Thomas Sheehy made a motion to approve the minutes of the September 23, 2009 meeting. David O'Toole seconded. There were no objections and the September 23, 2009 minutes were approved by unanimous vote.

3. Sean Spear, Executive Director's Report

Mr. Spear advised that if the projects in today's meeting were approved, that would leave approximately $2.5 billion in remaining allocation. He advised that the Staff is working on recommendations on how to utilize the remaining allocation on a carry-forward basis for 2010. After the December 16th meeting, there will be a more accurate remaining allocation balance.

Mr. Spear also discussed the announcement of the U.S. Treasury's Bond Purchase Program. Authority was made available in ARRA in early 2009, allowing the purchase of bonds from housing finance agencies in State and Local levels. On October 19, 2009, a two-part program was rolled out. The first part calls for the GSE's (Fannie Mae and Freddie Mac) to purchase bonds issued by housing finance agencies, bundle them into securities, and then sell them to the Treasury. It is designed to support single-family bond issuances, as well as, multi-family bonds. It will also provide credit enhancement for multi-family mortgage revenue bonds on individual projects. The second part provides a temporary credit facility for State HFA's. Allowing access to credit would provide them with the ability to cover the cost on variable rate bonds in individual portfolios. The HFA's are reviewing the best ways to utilize the program based upon their needs.

The first step that was taken by the HFA's was to identify how much in bond purchasing would be needed from the Treasury and how large a credit facility the State HFA's would need. California had 10 applicants who received most of their requested amounts based on the Treasury "cap". A total amount of $2.3 billion was allotted to the 10 applicants, and Cal-HFA received approval for $3.8 billion in a potential credit facility. The bonds must be issued by the end of 2009. The bonds would be issued with the assistance of Fannie Mae or Freddie Mac. The proceeds would be held in escrow and the agencies must also sell a portion in the private market. Once those private market proceeds are secured, then the Treasury would release equal portions of the GSE bonds proceeds that would be sold by the end of 2009. It is believed that this program will help unblock the bond markets; particularly for the local housing finance agencies, as well as Cal-HFA.

It is expected that CDLAC will receive new applications, modifications to existing applications, and requests to modify previously approved applications so the local HFA's may attempt to take advantage of this program.

- There were no comments or questions.

4. Public Comment

The Chairperson noted that she received one comment card from the public regarding an item that had been removed from the Agenda. The Chairperson asked the Board members if there was any objection to hearing the public comment at this time. Thomas Sheehy suggested that the public comment may make more of an impact when the item is considered; however, he was in full support of listening to the comments at this meeting. There were no other objections. The Chairperson asked if the speaker wished to comment at this time as the item was not being considered at this meeting.

The speaker opted to speak; his name is Larry Porter, representing Residents for Responsible Desalination: 1501 Westcliff Drive #201, Newport Beach, CA 92660, 949-722-9166; which has opposed Poseidon Resources since 2002. Mr. Porter referenced a failed project in Tampa Bay, Florida, which he stated had 2 contractors that went bankrupt. He stated that the Tampa Bay Water Authority took over the project from Poseidon Resources with an increase of costs of 30%. He mentioned a presentation from Dr. Scott Jenkins, representing Poseidon, about the quality of sea water for a project originally planned for Huntington Beach that Mr. Porter felt was in error. Mr. Porter mentioned that former Lt. Governor of California John Garamendi is opposed to desalination. Mr. Porter continued to discuss environmental and energy concerns with the project.

- Thomas Sheehy asked the Chairperson if the Board should instead be receiving information about the financing and tax implications regarding the project, as opposed to environmental and energy concerns, for which the Board has no jurisdiction.
- The Chairperson requested Mr. Porter discuss the economics and pricing of this project and whether financing should or should not be provided for the project.

Mr. Porter stated he felt Poseidon Resources lacked character and sited Poseidon Resources business model as stating that they could produce the product for $1100-$1300 per acre foot, which he said there has been no other supporting organization that concurs with that projected cost figure. He requested the Board verify this information with a Dr. Peter Gleick of the Pacific Institute and Marine Municipal Water District who states it would $3000 per acre foot, thereby not being able to repay the principal and interest. Mr. Porter also suggested the Board contact Mr. Tom Luster of the California Coastal Commission.

- Thomas Sheehy reminded the speaker that this Board has no authority over the Coastal Commission and requested the testimony be specific to the CDLAC authority.
- The Chairperson agreed and stated there was no letter of credit as of yet and those issues would be addressed when the letter of credit and/or credit rating is issued. The Chairperson stated that Mr. Porter's concerns and statements were appreciated and invited him to attend the scheduled meeting for the Poseidon consideration on January 14, 2010, to restate his concerns.
- Mr. Porter stated there was nothing further and thanked the Board for the opportunity to speak.

5. Consideration of an Issuance Period Extension for Orvieto Family Apartments and Brookwood Terrace Apartments to December 31, 2009

Richard Fischer advised that on July 22, 2009, CDLAC awarded allocation to the Brookwood Terrace Apartments and the Orvieto Family Apartments. According to CDLAC procedures, these projects were given a deadline to issue no later than November 30, 2009. In an effort to provide these projects adequate time to take advantage of the GSE Bond Program and finalize project financing, staff recommends the Committee **extend the current issuance deadline to December 31, 2009**. This is the latest date allowed under IRS tax code for projects not awarded allocation on a carry-forward basis in 2009.

If the GSE Bond Program does not materialize, as projected by December 4, 2009, the Applicant will abandon the alternative path and proceed as originally planned – and, if necessary, seek another extension from the Committee to issue bonds by the end of January 2010, in accordance with the original plan of finance.

Richard Fischer reported that the Staff recommended approval of an extended issuance expiration date of December 31, 2009 for the following two projects:

09-082 Brookwood Terrace Apartments **09-083 Orvieto Family Apartments**

- There were no comments or questions.
- David O'Toole made a motion for approval
- Thomas Sheehy seconded the motion
- The motion was unanimously approved to extend the issuance expiration date to December 31, 2009 for Brookwood Terrace Apartments and Orvieto Family Apartments.

6. Consideration of an Issuance Period Extension for Windsor Redwoods Apartments and Valley Vista Apartments to December 31, 2009

Misti Armstrong reported that on January 1, 2009, several Difficult Development Areas throughout California lost their DDA designation. To preserve the designation and its benefits, applications for projects within these DDA's were submitted to CDLAC prior to the December 31, 2008 DDA expiration date. The applicants later received an award of allocation on March 25, 2009, and in accordance with CDLAC Procedures, an issuance deadline of no later than August 10, 2009 was established. On July 22, 2009, the Committee further extended the issuance deadline to November 15, 2009. Staff has since been informed that due to closing delays the following two projects will be unable to finalize their project financing by their current CDLAC deadline:

09-023 Valley Vista Apts. (County of Contra Costa)
09-024 Windsor Redwoods Apts. (County of Sonoma)

To preserve the DDA designation associated with these projects, Staff recommends the Committee **extend the current August issuance deadline of November 15, 2009 to December 31, 2009**. This will allow each of the applicants' additional time to finalize their project financing while maintaining the benefits of their associated DDA designation. Should any of the projects fail to receive the necessary project financing by the December 31, 2009 deadline, the allocation will revert to the Committee and be reallocated to another issuer on a carryforward basis.

Misti Armstrong reported that the Staff recommended approval of an extended issuance expiration date of December 31, 2009 for 09-023 Valley Vista Apts and 09-024 Windsor Redwood Apts.

- There were no comments or questions
- Thomas Sheehy made a motion for approval
- David O'Toole seconded the motion

- The motion was unanimously approved to extend the issuance expiration date to December 31, 2009, to Valley Vista Apartments and Windsor Redwoods Apartments.

7. Consideration of and Approval to Disseminate Proposed Revisions to CDLAC Procedures Regarding the Recovery Zone Bond Reallocation Process for a 30-Day Public Comment Period

Crystal Alvarez reported that on February 17, 2009, HR 1, The American Recovery and Reinvestment Act of 2009, was enacted. Recovery Zone Bonds provide tax incentives and lower borrowing costs for local governments and private entities to promote job creation and economic recovery in areas particularly affected by employment declines. The Recovery Zone Bonds are allocated by the Department of Treasury to the states based on the proportion of each state's 2008 employment decline bears to the national 2008 employment decline. The allocation has been further sub-allocated by the Department of Treasury directly to identified counties and large municipalities (populations of more than 100,000) as published on the IRS website.

The State's allocation amounts are described below:

1) Recovery Zone Facility Bonds (RZFB): The total California allocation is $1,209,338,000. The ARRA legislation authorizes $15.0 billion in Recovery Zone Facility Bonds (RZFB) nation wide. These are a new category of bonds that are treated as tax exempt private activity bonds for issuance in 2009 and 2010.

2) Recovery Zone Economic Development Bonds (RZEDB): The total California allocation is $806,225,000. The ARRA legislation authorizes $10 billion in tax credit bonds for Recovery Zone Economic Development Bonds (RZEDB) nationwide; these are taxable tax credit bonds for issuance in 2009 and 2010.

On August 26, 2009, the Committee approved new CDLAC procedures related to the reporting by the local governments of their actions related their Recovery Zone Bond activities, as well as guidance on the circumstances under which their allocations would be waived or deemed waived.

CDLAC staff now proposes to revise the Recovery Zone Bond procedures to specify the reallocation process.

Crystal Alvarez requested approval of the distribution of the proposed Recovery Zone Facility Bond Re-allocation Procedures and Recovery Zone Economic Development Bond Re-allocation Procedures for a 30-day public comment period.

- There were no comments or questions
- Thomas Sheehy made a motion for approval
- David O'Toole seconded the motion
- The motion was unanimously approved to allow a 30-day public comment period for the proposed Recovery Zone Facility Bond and Economic Development Bond Re-allocation Procedures.

8. Consideration of and Approval to Disseminate Proposed Revisions to CDLAC Procedures Regarding the Qualified Energy Conservation Bond Reallocation Process for a 30-Day Public Comment Period

Brady Hill reported that IRS Notice 2009-29 of the American Recovery and Reinvestment Act of 2009 provided that the State of California would receive $381,329,000 in Qualified Energy Conservation Bond ("QECB") allocation. On July 22, 2009, this allocation was distributed directly by the U.S. Department of Treasury to large local governments. The distributions to large local governments were as follows: the State received **$12,746,103;** counties collectively received **$197,669,919**; municipalities collectively received **$170,173,417**; and Indian tribal governments collectively received **$739,561.**

The IRS Notice further requires that “allocation to a State or large local government shall be allocated in turn by the State or large local government to issuers within the State in a manner that results in the use of not less than 70 percent of the allocation to such State or large local government to designate bonds that are not private activity bonds.” Conversely, the Notice mandates that no more than 30 percent of the allocation to such State or large local government be used to designate bonds that are private activity bonds. The proceeds of the Qualified Energy Conservation Bonds can be used for one or more “qualified conservation purposes”.

RE-ALLOCATION OF QECBs

A. CDLAC will administer both the allocation of the State’s allotment of QECB authority and the re-allocation of the QECB allocation waived by the counties, large municipalities and tribal governments. As such, CDLAC has developed proposed Procedures.

B. Specifically, CDLAC will both allocate the State’s allotment of QECB authority and re-allocate allocation that has been waived by a county, large municipality, or tribal government in the following manner:

   1. As CDLAC’s first priority, the counties, large municipalities and tribal governments that waived their designated allocation may request up to their waived allocation amount by providing the following documentation: a) a letter requesting the amount of allocation and a description of the proposed project; b) a resolution that the issuer has approved the project; c) documentation of the appropriate governing body’s or bodies or elected official’s approval of the Project (private activity bonds only); d) written opinion from bond counsel which states that the project being funded with QECBs qualifies under the federal guidelines; e) a commitment letter from the purchaser or underwriter for the amount of the allocation requested.

   2. City, County and Tribal Applicants that are seeking an allocation amount above their initial allocation award and State Entity Applicants will have their applications evaluated, ranked and awarded Allocations from the Qualified Energy Conservation Bond Reallocation Pool within their particular Project and/or Program pool. As such, CDLAC has established various project and/or program categories based on the various “qualified conservation purposes” established for the QECB allocation in IRS Notice 2009-29.

On August 26, 2009, the Committee approved new CDLAC procedures related to the reporting by the local governments of their actions related their QECB activities, as well as guidance on the circumstances under which their allocations would be waived or deemed waived.

CDLAC staff now proposes to revise the QECB procedures to specify the State allocation and local government reallocation process.

Brady Hill requested approval of the allocation of ARRA Qualified Energy Conservation Bond Allocation and approve the distribution of proposed Qualified Energy Conservation Bond Procedures for a 30–day public comment period.

- There were no comments or questions
- David O’Toole made a motion for approval
- Thomas Sheehy seconded the motion
- The motion was unanimously approved to allow a 30-day public comment period for proposed Qualified Energy Conservation Bond Procedures and the allocation of ARRA Qualified Energy Conservation Bond Allocation.

9. Consideration of and Approval to Disseminate Proposed Single Family Housing Program Revisions to CDLAC Procedures

John Weir reported that the distribution criteria for the Single Family Housing Program is on a Fair Share basis; that is, each county receives a proportionate share of the amount reserved for Local Issuers based on the population of the county relative to the State's total population. The proposed procedures clarify that any city has the ability to apply independent of its county, based on the same Fair Share method. The second revision applies to the Single Family Housing Program Bonus pool; establishing a final Bonus Pool round whereby any unallocated Single Family Housing funds may be made available again to counties regardless of their initial Fair Share amount.

Presently, Section 18.II.A provides that any city may apply for allocation independent of the county level issuer for a proportionate share of the amount reserved for that county based on the city's total population relative to the county's total population. Any allocation awarded specifically to cities shall reduce the amount available for the county level issuer accordingly. The first set of proposed revisions seeks to provide explicit language for how these amounts are calculated.

The revisions to the Single Family Housing Bonus Pool (Section 18.II.B) will enable Local Issuers to access additional funds at the final meeting of the year. These revisions will, at the Committee's discretion, make available for the final round all unallocated funds remaining in the Single Family Pools to Local Issuers regardless of their initial Fair Share cap. This will enable Local Issuers to continue funding successful housing programs especially during a time of low demand for other programs in other counties that may not have sought their fair-share portion of the allocation.

John Weir reported that the Staff recommended approval to disseminate the proposed Single Family Housing Program revisions to the CDLAC Procedures for a 30-day public comment period.

- There were no comments or questions
- David O'Toole made a motion for approval
- Thomas Sheehy seconded the motion
- The motion was unanimously approved to allow a 30-day public comment period for proposed Single Family Housing Program revisions.

10. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Single Family Housing Programs and Awards of Allocation

Sarah Lester reported that there were no appeals to be considered. She also advised that the Committee received one (1) application requesting their 2009 Fair Share Single Family Housing allocation of $25,000,000 for the issuance of bonds in support of a Mortgage Revenue Bond Program.

Sarah Lester reported that the Staff recommended approval of $25,000,000 to fund one (1) program in the Single Family Housing Program from Southern California Housing Finance Authority.

- There were no comments or questions
- Thomas Sheehy made a motion for approval
- David O'Toole seconded the motion
- The motion was approved to fund one (1) program in the Single Family Housing Program for $25,000,000 from the Southern California Housing Finance Authority.

11. Public Comment

There were no other comments from the public.

12. Adjournment

The Chairperson adjourned the meeting at 2:15pm.