

California Debt Limit Allocation Committee (CDLAC)

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

March 24, 2010 Meeting Minutes

1. Call to Order and Roll Call

Patricia Wynne, Chairperson, called the California Debt Limit Allocation Committee meeting to order at 1:34 p.m.

Members present were Cynthia Bryant for Governor Arnold Schwarzenegger, Terry McGuire for State Controller John Chiang, and Patricia Wynne for State Treasurer Bill Lockyer.

Advisory Members present were Steven Spears of Cal-HFA and Russ Schmunk for Lynn Jacobs of the Department of Housing and Community Development.

The chairperson declared a quorum.

2. Approval of the Minutes of the January 27, 2010, Meeting (Action Item)

Cynthia Bryant made a motion to approve the minutes of the January 27, 2010 meeting. Terry McGuire seconded. There were no objections and the January 27, 2010 minutes were approved by unanimous vote.

3. Executive Director's Report (Informational Item)

CDLAC Executive Director, Sean L. Spear reported that at the January 27, 2010 meeting, the Committee approved revisions to the Recovery Zone and Qualified Energy Conservation Bond Reallocation procedures. The revisions established both the Plan of Issuance reporting process for the localities, as well as, the reallocation application process for projects. Through the Plan of Issuance process, CDLAC received well over \$100MM in waived allocation for each Recovery Zone program and over \$190MM for the Qualified Energy Conservation Bond program. On February 23, 2010, CDLAC received applications for each of these programs, with qualifying applications being recommended for approval under Agenda Items 8 and 9.

Mr. Spear advised that if these applications are approved today, CDLAC will still have \$101MM for RZ Facility Bond Projects; \$94MM for RZ Economic Development Projects; and \$192MM for QECB Projects.

Applications will be taken on Friday, March 26, 2010, for the next round of projects, with recommendations to be heard by the Committee at the May 26th Meeting.

Mr. Spear noted that there has been some significant Federal legislative activity around these programs within the last month.

First, as part of the first Jobs Bill signed into law by the President last week, Issuers of Qualified Energy Conservation Bonds now have the option to issue these bonds with either a tax credit in-lieu of an interest payment OR now with an interest subsidy (similar to Build America Bonds). This interest subsidy would cover 70% of the taxable interest on the bonds, and can either be retained by the Issuer or transferred to the project to help cover project expenses.

Second, the House Ways & Means Committee has proposed a second Jobs Bill, which features an extension of the Recovery Zone Bond program for another year. An additional \$25 Billion would also be allocated to the program; to be distributed more widely to localities than the current program. There is no Senate version of this Bill yet, so it is unclear how much of the House's proposals will survive in a final bill that would be sent to the President for signature.

Mr. Spear advised that the Staff will keep the Committee updated on this and other Federal proposals that may impact our programs.

Mr. Spear continued that the Treasurer's Office has rolled out the terms for a program designed to help affordable housing projects that received commitments of State Multifamily Housing Program and Joe Serna Farm Worker Housing Program funds from HCD. Many of these projects have not been able to move forward since the PMIB Freeze back in December 2008. To provide some assurance to the construction lenders on these projects, the State will now be willing to commit to sell that lender a general obligation bond if HCD could not fund their permanent loan for whatever reason. The bond proceeds would be used to cover the HCD loan obligation for that project. The State would then issue bonds through a public sale at the first opportunity and use those proceeds to retire the Construction Lender bond as soon as possible.

Mr. Spear stated that though Citigroup was instrumental in developing the terms for this Private Placement Option Program, it is hoped that other construction lenders who have committed to these projects will also take advantage of this arrangement.

Mr. Spear concluded with that Staff believes that there are a dozen or so Bond projects that can now move forward if their lenders are willing to sign-on. Staff will work with both the Lenders and the Project Sponsors to encourage their participation.

- There were no comments or questions.

4. H.R. 3221 Supplemental Housing Allocation Update (Informational Item)

Misti Armstrong reported that on July 30, 2008, the Housing Assistance Tax Act of 2008 (the "Act") was enacted. The Act modified certain rules (the "Qualified Mortgage Bond Rules") in the Internal Revenue Code of 1986 (the "Code") that apply to tax-exempt qualified mortgage bonds and qualified veterans' mortgage bonds; both issued to finance mortgage loans for single-family residences. The Act also provided **\$1.178 billion to California** in additional volume cap (the "Allocation"), for the purpose of

issuing tax-exempt bonds for three categories of eligible housing programs: helping homeowners refinance sub-prime loans, providing below-market rate loans to first time homebuyers, and construction of low-income rental housing.

On December 3, 2008, CDLAC awarded Allocation to multifamily and single-family housing issuers (the "Applicants") on a carryforward basis. However, the Act limited the life of the Allocation and required that the Allocation be issued no later than December 31, 2010. For the single-family housing program, CDLAC awarded the Allocation for the purposes of refinancing qualified subprime loans as defined by the Act and originating loans for real estate owned properties. The remainder of the Allocation was awarded to multifamily housing projects for general program purposes. To ensure full utilization of the Allocation, Applicants were also authorized by the Internal Revenue Service to modify the use of the Allocation and/or transfer it to another Applicant, if necessary. The CDLAC resolution requires CDLAC approval prior to either such action.

Ms. Armstrong continued that at the July 22nd Committee Meeting, CDLAC staff was asked to follow-up with the Issuers possessing unused Allocation to determine the status of that Allocation and their plans for its usage. At the September 23rd meeting, the Committee received an informational report from CDLAC staff detailing each Issuer's plans. The Committee requested a follow-up status report on each Issuer's progress, with a recommendation on whether or not to reclaim any unused allocation and award it to other applicants. To date, there remains \$944,480,156 in unused Allocation, held by five (5) Issuer/Applicants (see Attachment A). Staff has discussed the status of each award of Allocation with the respective Applicant.

For those Applicants with no current multifamily housing project pipeline or single family housing program demand, staff has requested that the Allocation be returned to CDLAC with no penalty. Staff will recommend that these unused balances be awarded and transferred to qualified residential rental project allocation recipients at the March CDLAC allocation meeting to ensure full utilization of this limited resource.

There were no questions or comments.

5. Consideration and Approval of Proposed Revisions to CDLAC Procedures the Industrial Development Bond Program (Action Item)

Richard Fischer reported that on February 19, 2010, CDLAC Staff distributed proposed revisions to the Industrial Development Bond Program Procedures for a 30-day public comment period. The revisions address general as well as technical changes, and are being recommended to achieve the following goals for the Industrial Development Bond Program:

- Establishment of point criteria for the IDB Application that will promote the maximum usage of allocation and reflects the true state of manufacturing in California.
- Enable manufacturing firms to receive recognition for the contributions that they make to California's labor sector, economy and environment.
- Establish a fair and objective application for issuers, practitioners and borrowers that will rank projects according to how well they perform.
- Public Benefit: Ensure a process that focuses on the creation of public benefits. Inasmuch as the application process ranks projects according to how much

public benefit they provide in comparison to that of other projects, there is a strong incentive for projects to provide as much public benefit as possible.

The proposed revisions would change the following evaluation criteria for IDB allocation:

- Enhances the Job Category by awarding points to job creation and job retention separately.
- Expands and renames Welfare to Work category to Workforce, Economy and Development. This category includes Welfare to Work, Workforce Training and Exports Outside of California subcategories.
- Replaces Child Care criteria with Employer Retirement Contribution under the newly renamed Health, Dental, Vision and Retirement Category. Revises the employer contribution levels for Health, Dental and Vision to reflect current market amounts.
- Increases the amount of points available for higher than comparable average hourly wages.
- Expands and renames Lands Use/ Energy Efficiency category to Environmental Stewardship. This category includes existing Land Use, Energy Efficiency, and Public Transportation subcategories (with new subsidized transit points), and the new Renewable Energy, Manufacturing of Certified Friendly Products and LEED-Certified Main Facility subcategories.
- Expands the Leverage category to recognize taxable IDB's and taxable loans, private funds and equity.

Staff received no verbal comments on the proposed procedures at the public hearing held on March 9, 2010. In addition, no written comments were received during the 30-day public comment period.

Mr. Fischer advised that the Staff recommends the approval of the proposed Industrial Development Bond Procedures as modified.

- Sean Spear commented that the work on this change began last year and it is hoped that this will simplify the application review process and give applicants a clearer understanding of CDLAC's expectations for the review process. If approved today, this will be the last revision to the CDLAC procedures for some time, and we will use these as the basis for the regulations and regulation changes that will be sought this summer.
- Cynthia Bryant commented that on page 47, a non updated page that the average unemployment rate measurement currently used should be a county wide measure rate. This would be a better gauge according to EDD.
- Misti Armstrong commented that Staff would look into the recommendation and confirm with Ms. Bryant.
- There were no other questions or comments.
- Cynthia Bryant moved for approval.
- Terry McGuire seconded the motion for approval.

- The motion was unanimously approved for the proposed revisions to CDLAC Procedures regarding the Industrial Development Bond Program.

6. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Exempt Facility Bond Project and an Award of Allocation (Action Item)

Applicant: California Infrastructure and Economic Development Bank
Project: Poseidon Water
Allocation Amount: \$530 million

John Weir reported there are no appeals.

Mr. Weir continued that the Exempt Facilities Pool received one (1) application requesting an allocation of \$530,000,000. The Project originally received an award of Allocation on January 27, 2010. On March 12th, CDLAC staff received notice that the Applicant was returning the allocation as they would be unable to issue bonds by the April 27, 2010 expiration date; due to an outstanding approval required by the San Diego County Water Authority. At the Applicant's request, the Project is being reconsidered for a new allocation in the same amount; providing additional time to secure the San Diego County Water Authority and California Infrastructure Bank approvals needed before issuing the bonds. There have been no substantive changes to the Project Sponsor's proposal (and resubmitted application) since the Committee approved this project on January 27th.

At 1:50 p.m., Controller John Chiang replaced Terry McGuire as the representative from the Controller's Office.

The Poseidon Desalination Project (Application 09-098) has been (re)submitted by the California Infrastructure and Economic Development Bank ("I-Bank") as the issuer. As a "facility for the furnishing of water" defined under the IRS Code, this proposal is eligible for consideration for an allocation of private activity tax exempt bond authority as permitted under Section 21.II.F of the CDLAC Procedures.

The project consists of a 50 million gallon per day reverse osmosis desalination plant that draws raw seawater from the Encina Power Station cooling system to produce potable drinking water for transmission to the San Diego region. Contracts for water delivery are already in place and upon completion the plant will provide San Diego County with nearly 10% of its total water supply. The plant's salinated by-product ("brine") will be discharged and mixed with the cooling water for dilution and eventual return to the ocean.

Staff from the California Pollution Control Financing Authority (CPCFA) also performed a Technology Review to determine the viability of the technology proposed to be employed for the project. During this review process, staff consulted with the applicant and various interested parties (both for and against the project). The Review discussed the desalination process to be employed, the legal status of the project, and the climate change policy back-drop for the project.

The proposed financing structure meets the requirements of the Committee's Procedures for rated or non-rated bonds without credit enhancement (Section 9.III.A).

Particular attention was given as to whether BBB- bonds would be marketable in today's investment climate. According to Barclays, the market for low investment grade tax-exempt bonds is strong. This is due in part to the success of taxable bonds which have pulled demand for mid to high rated bonds away from tax-exempt issues. Investors looking to meet higher yield targets have instead been targeting lower rated issues for investing. This market condition is evidenced by the increasing volume of these types of transactions over the last quarter of 2009. In addition, the financial strength of the Project and Project Sponsor was evaluated. In its ratings analysis, Standard & Poors evaluated the strength of the Project and all of the project counterparties, including equity sponsors, contractors, the operator and all nine of the water districts entering into purchase agreements. Through its review of Standard & Poors' analysis (as summarized in its Rating Determination Letter), CDLAC Staff believes that their conclusions were sound. Finally, attention was also given as to whether the proposed financing has reasonable protections in place for bond purchasers and issuers in case of default. All amounts due will be secured by a first priority security interest in all of the borrower's assets including, but not limited to rights to receive payments from all purchase agreements, construction guarantees secured by performance bonds, and all project related accounts and insurance policies of the borrower.

The Committee has previously approved two Exempt Facilities projects with non-rated bonds without credit enhancement in the past four years. This project would be the largest of its kind.

In addition, staff also recommends that the following be memorialized in the Resolution:

- a. That prior to bond closing the Applicant agrees to report back to CDLAC with information on their bond purchase commitments,
- b. That bonds, if unenhanced, must be marketed to qualified institutional investors only, and
- c. That bonds be issued in minimum \$500,000 denominations.

If the structure should change, the Applicant will be required to return to CDLAC for approval of the revised structure prior to issuance.

There are no appeals pending for this application.

Mr. Weir advised that the Staff recommends the approval of \$530,000,000 in tax-exempt bond allocation to fund the Poseidon Desalination Project under the Exempt Facility Program as noted above.

- John Chiang asked why additional time was required to secure the San Diego County Water Authority approval.
- Andrew Kingman, CFO of Poseidon Water answered that SDCWA had to reach agreement on the connection of the distribution system into the aqueduct and the SDCWA board has to review and approve the agreement at their April 22, 2010, meeting. Approval is expected.
- John Chiang asked for an update on securing a second rating from a credit agency.

- Andrew Kingman responded that it is expected by April 2, 2010. With a rating minimum of BBB- to meet the criteria.
- Steve Spears asked whether Poseidon is to come back to the Staff or Committee with information about bond purchases.
- Sean Spear responded the information will be given to the Staff; one of the conditions of the approval was that Poseidon would provide CDLAC with information on the potential individual bond purchasers prior to the bond closing.
- John Chiang noted he maintains his same concerns as mentioned at the January 27, 2010, meeting in that these important projects have important financial standards to maintain.
- There were no other comments or questions.
- Cynthia Bryant moved for approval.
- John Chiang seconded the motion for approval.
- The motion was unanimously approved for the Application for an Allocation of the State Ceiling on Qualified Private Activity Bonds for an Exempt Facility Bond Project and an Award of Allocation for Poseidon Water for \$530,000,000.

7. Consideration of Appeals and Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects and Awards of Allocation (Action Item)

John Weir reported that there are no appeals.

Mr. Weir also reported that the Mixed Income Pool received one (1) application for a project requesting a total allocation of \$21,100,000.

In addition, the General Pool received five (5) applications requesting a total allocation of \$75,341,985.

Mr. Weir concluded with that the Staff recommends:

- 1) Approval of \$21,100,000 to fund one project in the Mixed Income Pool; and
- 2) Approval of \$75,341,985 to fund all five projects in the General Pool.

- There were no comments or questions.
- Cynthia Bryant moved for approval.
- John Chiang seconded the motion for approval.
- The motion was unanimously approved for the Applications for an Allocation of the State Ceiling on Qualified Private Activity Bonds for Qualified Residential Rental Projects for one Mixed Income Pool project for \$21,000,000 and five General Pool projects for \$75,341,985.

California Statewide Communities Development Authority	Lincoln Walk Apartments	\$21,100,000
Housing Authority of the City of Chula Vista	Landings Phase II	\$30,000,000

California Statewide Communities Development Authority	Parkside Terrace Apartments	\$9,954,925
Oakland Housing Authority	Lion Creek Crossings, Phase IV Apartments	\$21,000,000
California Statewide Communities Development Authority	Hacienda Hills Apartments	\$4,707,060
California Statewide Communities Development Authority	Crescent Manor Apartments	\$9,680,000

8. Consideration of Appeals and Applications for a Re-Allocation of American Recovery and Reinvestment Act - Recovery Zone Economic Development Bonds and Awards of Allocation (Action Item)

Crystal Alvarez reported that there are no appeals.

Ms. Alvarez also reported that the Recovery Zone Economic Development Bond Program received three (3) complete applications for projects requesting a total allocation of \$18,950,000.

Ms. Alvarez advised that the Staff recommends the approval of \$18,950,000 in reallocated American Recovery and Reinvestment Act - Recovery Zone Economic Development Bond authority to fund all three (3) projects as noted above.

- There were no comments or questions.
- Cynthia Bryant moved for approval.
- John Chiang seconded the motion for approval.
- The motion was unanimously approved for the Applications for a Re-Allocation of American Recovery and Reinvestment Act - Recovery Zone Economic Development Bonds of 3 projects for \$18,950,000.

County of Santa Barbara	Emergency Operations Center	\$6,250,000
County of Santa Barbara	Betteravia Administration Building	\$6,300,000
County of Santa Barbara	Santa Barbara Historic Courthouse Public Defender Remodel	\$6,400,000

9. Consideration of Appeals and Applications for a Re-Allocation of American Recovery and Reinvestment Act - Recovery Zone Facility Bonds and Awards of Allocation (Action Item)

Crystal Alvarez reported that there are no appeals.

Ms. Alvarez continued that the Recovery Zone Facility Bond Program received two (2) complete applications for projects requesting a total allocation of \$30,593,269.

It should be noted that for one application, the Irvine Unified School District Solar, the Applicant intends to issue the bonds without credit enhancement and with no credit rating. While there is precedent for the Committee to approve such a structure, staff was concerned about the ability for such an issuance plan to succeed. However, staff believes additional approval conditions may ensure a successful bond issuance that would adequately protect both the project and the Issuer. Therefore, staff recommends the approval of allocation with the following conditions:

- a. That the bonds be marketed and sold only to qualified institutional investors;
- b. That the bonds be sold in denominations of no less than \$500,000; and
- c. That no less than three (3) business days prior to issuance, the applicant shall report to CDLAC staff information on all bond purchase commitments. This report shall include the name of the entities entering into such commitments along with copies of their commitment letters and respective amounts.

If the structure should change, the Applicant will be required to return to CDLAC for approval of the revised structure prior to issuance.

Ms. Alvarez advised that the Staff recommends the approval, with conditions, of \$30,593,269 in reallocated American Recovery and Reinvestment Act - Recovery Zone Facility Bond authority to fund the two (2) projects as noted above.

- Sean Spear commented Staff was concerned about the structure of the proposal. As previously mentioned there has been more market interest in bonds that are not necessarily the highest investment grade. With the conditions that Staff proposed, Staff believes that this could be a successful bond issuance. Moving forward, CDLAC would not wish to receive proposals structured like this and wants to maintain the standard that applications are submitted with an investment grade of A or higher.
- Patricia Wynne asked if the structure changes, does the applicant return to Staff or the Committee.
- Sean Spear responded that the applicant would return to the Committee.
- There were no other comments or questions.
- Cynthia Bryant moved for approval.
- John Chiang seconded the motion for approval.
- The motion was unanimously approved for the Applications for a Re-Allocation of American Recovery and Reinvestment Act - Recovery Zone Facility Bonds for 2 applications for a total of \$30,593,269.

California Enterprise Development Authority	Frank-Lin Distillers Products, Ltd. Fairfield	\$20,599,000
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California Statewide Communities Development Authority	Irvine Unified School District Solar	\$9,994,269
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10. Public Comment (Action Item)

- Curt Johnston from the City of Fairfield wished to thank Mr. Spear, his staff, and the Committee for their work regarding the reallocation process for the Economic Development Recovery Zone Bonds and the approval of the project that will benefit the City of Fairfield. It will get an additional 80,000 square feet built.
- There were no other comments or questions.

11. Adjournment

- The Chairperson adjourned the meeting at 2:07 p.m.