

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY

Meeting Date: October 17, 2017

Request to Consent to the Sale of Bond-Financed Project

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Summary. Staff requests Board approval to consent to the sale of the Ratto Group of Companies project to a person/entity other than a participating affiliate which in this case is Recology Inc. Recology, Inc. is in the process of acquiring The Ratto Group of Companies and all of its assets.

Background. On November 2, 2012, The Ratto Group of Companies and/or its affiliates (the “Company”) received Final Resolution and Volume Cap Allocation Approval in the amount of \$16,500,000 to finance the following project (the “2012 Project”):

- upgrade to two MRFs located in Santa Rosa, which included the purchase of new sort lines, conveyors, balers and loaders.
- upgrade to its MRF facility in Petaluma which includes the MRF upgrades described above as well as the construction of additional buildings, new pavement, a water collection and pretreatment system, and other general site improvements; and
- purchase of collection vehicles, containers and transfer station equipment to be housed at various locations.

Pursuant to a loan agreement (the “Loan Agreement”), the Authority made a loan to the Company to pay for the construction of the 2012 Project. To finance the loan, the Authority issued bonds (the “Bonds”) pursuant to an indenture (the “Indenture”). The Bonds were secured by a letter of credit.

Current Request. By written notice dated September 7, 2017, the Company informed the Authority that it wishes to sell the 2012 Project and all or substantially all of its assets to Recology Inc. Section 5.2(a) of the Loan Agreement restricts the ability of a Borrower to sell transfer, lease or otherwise dispose of any portion of the 2012 Project unless it meets certain conditions including providing to the Authority: (1) advance written notice, (2) evidence that the purchaser has covenanted in a written instrument for the benefit of the Authority to comply with the instructions of the Borrower issued for the purpose of assuring that the 2012 Project be completed and operated in conformance with the Loan Agreement, the Act, the Tax Certificate and federal tax law, (3) a determination from a rating agency that the rating on the Bonds will not be lower as a result of the sale, (4) evidence that the purchaser is in good standing, (5) a copy of the document evidencing such sale, (5) opinion of bond counsel, and (6) an opinion of counsel.

But under Section 5.2(c), the Company does not have to comply with these sale requirements if the Bonds will be defeased on the same day as the sale or if the Bonds are otherwise no longer outstanding on the date of the sale (such as the case with a redemption of the Bonds).

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In this case, in a letter to the Authority dated September 15, 2017, Recology, Inc. stated that it wishes to cause the redemption of all of the Bonds at the earliest possible date after the closing of their purchase of the Company's assets. In accordance with the Bond Indenture, such a redemption can occur only on the once monthly "Interest Payment Date" (the first Wednesday of every month), which will not coincide with the closing of the asset sale. If the Bonds were not secured by a letter of credit, the Bonds could simply be defeased in accordance with Section 5.2(c) of the Loan Agreement upon the closing of the sale of the assets but since the bondholders purchased the Bonds on the basis of the letter of credit, it must stay in place until redemption to protect bondholders. For business reasons, Recology, Inc. wishes that the asset sale close as soon as possible and therefore, the Company intends to redeem the Bonds on the first Interest Payment Date after the closing of the sale of the assets but no later than January 3, 2018, and upon the condition that the Borrower obtain the Authority's consent to the sale of the 2007 Project. The Company has already sent the bondholders a notice that the Bonds will be redeemed on November 1, 2017 but may withdraw that notice and notice the redemption at the November or December Interest Payment Date if the asset sale does not occur in October, all as is permitted by the Indenture.

Section 5.2(e) of the Loan Agreement permits the Authority to consent to the sale of the 2012 Project even though it does not meet all of the requirements of the Loan Agreement. The Company is requesting that the Authority use its consent power under Section 5.2(e) because the Loan Agreement does not specifically address this situation. Section 5.2(a) is cumbersome because the Bonds will remain outstanding for only a brief period. Section 5.2(c) does not apply because the Bonds will not be paid off on the same day as the sale.

Because the Bonds will remain outstanding for only a brief period, the Company will provide satisfactory evidence to the Authority that a portion of the sale proceeds will be applied solely to redeem the Bonds and that the Letter of Credit will remain in effect until the Bonds are redeemed. The Indenture and Loan Agreement for the Bonds will remain in full force and effect.

As part of the sale, the Company will also be selling a project financed by the Authority in 2007, the Company plans to request approval regarding the sale of the 2007 project at the Authority's November meeting.

Staff Recommendation. Staff recommends the Authority approve Resolution No. 17-01-001 and delegate to the Executive Director the authority to consent to the sale of 2012 Project to Recology Inc. and/or its affiliates.

Resolution No. 17-01-001

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL
FINANCING AUTHORITY CONSENTING TO THE SALE OF A
PROJECT FROM THE RATTO GROUP OF COMPANIES, INC. TO
RECOLOGY, INC. AND CERTAIN OTHER ACTIONS IN CONNECTION
THEREWITH**

October 17, 2017

WHEREAS, the California Pollution Control Financing Authority (“Authority”), a public instrumentality, approved an application of The Ratto Group of Companies, Inc., a Delaware corporation (the “Borrower”) for financial assistance in the acquisition and construction of certain pollution control facilities (the “2012 Project”) and issued its California Pollution Control Financing Authority Variable Rate Demand Solid Waste Disposal Revenue Bonds (The Ratto Group of Companies, Inc. Project) Series 2012 (the “2012 Bonds”) to provide such financial assistance pursuant to the terms and provisions of that certain Indenture, dated as of October 1, 2012 (the “2012 Indenture”); and

WHEREAS, the proceeds received from the sale of the Bonds were loaned to the Borrower pursuant to the terms and provisions of that certain Loan Agreement, dated as of October 1, 2012 (as amended, the “2012 Loan Agreement”) to finance the 2012 Project as further described in Exhibit A to the 2012 Loan Agreement; and

WHEREAS, the Borrower has entered into an asset purchase agreement with Recology, Inc., a California corporation (the “Purchaser”) pursuant to which the Borrower has agreed to sell substantially all of its assets to the Purchaser, including such Borrower assets constituting the 2012 Project (collectively, the “Asset Purchase”); and

WHEREAS, the Borrower intends to use a portion of the proceeds of the Asset Purchase to redeem the 2012 Bonds on or after the date of such Asset Purchase; and

WHEREAS, Section 5.2(e) of the 2012 Loan Agreement requires the Borrower to obtain the consent of the Authority for any disposition, lease or sale of any portion of the 2012 Project financed with the 2012 Bonds and to provide such information, reports and documents relating to the disposition or sale as the Authority may reasonably request and the Authority desires to provide such consent; and

WHEREAS, certain Lenders (the “Lenders”) and the Agent for such Lenders (the “Agent”) desire to provide approval of the Asset Purchase, including the sale of the 2012 Project pursuant to that certain Consent Agreement (the “Consent Agreement”) by and among the Borrower, the Lenders and the Agent, as acknowledged by the Authority; and

WHEREAS, in addition to the 2012 Project, the Authority issued bonds to finance pollution control facilities for the Borrower in 2007 (the “2007 Project”) and the 2007 Project will also be part of the Asset Purchase;

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NOW, THEREFORE, BE IT RESOLVED by the California Pollution Control Financing Authority, as follows:

Section 1. The Authority finds and determines that the foregoing recitals are true and correct.

Section 2. Pursuant to Section 5.2(e) of the 2012 Loan Agreement, the Authority hereby consents to the sale of the 2012 Project from the Borrower to the Purchaser upon the condition that the 2012 Bonds will be redeemed on the first Interest Payment Date, as defined in the 2012 Indenture, after the date of the Asset Purchase no later than January 3, 2018, and upon the condition that the Borrower obtain the Authority's consent to the sale of the 2007 Project.

Section 3. The Chairman and/or the Executive Director or the Deputy Executive Director is each hereby authorized and directed, acting alone, to request information and documentation from the Borrower relating to the sale, including documentation evidencing that a portion of the sale proceeds will be applied solely to redeem the 2012 Bonds and that the Letter of Credit will remain in effect until the 2012 Bonds are redeemed.

Section 4. The Chairman and/or the Executive Director or the Deputy Executive Director of the Authority is each hereby authorized and directed, acting alone, to do any and all ministerial acts, including (without limitation) to execute and deliver any and all documents and certificates, including a consent agreement, they may deem necessary or advisable in order to effectuate the purpose of this resolution.

Section 5. This resolution shall take effect immediately upon its passage.