

ATTACHMENT 2: MAY 28, 2003 STAFF REPORT AND RESOLUTION

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK AGENDA ITEM I.

STAFF REPORT

ISSUE:

The Imperial Irrigation District ("IID") has requested that the State of California provide a loan guarantee in order to insure that they can issue revenue bonds required to finance water conservation measures designed to ensure that California continues to receive the maximum amount of water from the Colorado River. Pursuant to the CIEDB enabling statute, including Government Code section 63060, the CIEDB has broad authority to provide loan guarantees.

Staff prepared draft Criteria, Priorities and Guidelines ("Criteria") for a loan guarantee for IID and received Board approval to circulate the Criteria for public comment. Government Code section 63040 requires "consultation with the appropriate state and local agencies" prior to establishing the Criteria for the selection of projects to receive assistance from the CIEDB. The Board determined previously that this requirement would be satisfied by circulating draft Criteria for public comment to the CIEDB's agenda mailing list and posting it on the CIEDB's web site. Staff has circulated the draft Criteria in accordance with these guidelines, as well as providing the draft Criteria to IID, the San Diego County Water Agency ("SDCWA"), the Coachella Valley Water District (CVWD) and the Metropolitan Water District of Southern California ("MWD"). One public comment, jointly submitted by C. Wesley Strickland, Esq., of the law firm of Hatch and Parent, and Bob Campbell at SDCWA, was received. Mr. Strickland's and Mr. Campbell's proposed revisions to the Criteria, as well as the CIEDB staff response, are attached as Exhibit 1.

BACKGROUND

On April 29, 1998, IID and SDCWA entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. MWD and CVWD challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will in the future be limited to a 4.4 million acre-foot annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of the Interior adopted Interim Surplus Guidelines ("Guidelines") that would make

available additional surplus Colorado River water to California for a period of 15 years to provide a “soft landing” for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. Under the terms of the Guidelines, the additional surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. Major reasons for the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if actual mitigation costs exceed those funds available to meet those costs.

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45-years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last Fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California’s use has exceeded the State’s annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California’s plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year “would have a significant impact on California’s economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water.”

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the water supply capital improvements constituting IID water conservation. The purpose of the proposed loan guarantee

is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

RECOMMENDATION

Staff recommends adoption of Resolution 03-16 authorizing the adoption of the attached Criteria.

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Note: Suggested revisions to the draft Criteria, Priorities and Guidelines jointly submitted by C. Wesley Strickland, Esq., of the law firm of Hatch and Parent, and Bob Campbell at San Diego County Water Agency, are shown as marked changes. The CIEDB staff response to their suggested revisions are shown in bold italics.

**CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK
Draft Criteria, Priorities and Guidelines
Proposed Imperial Irrigation District, Metropolitan Water District
of Southern California, Coachella Valley Water District, and San Diego
County Water Authority Loan Guarantee**

Response #1: The above suggested revisions were not accepted. See response #6 below.

A. BACKGROUND

On April 29, 1998, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. The Metropolitan Water District of Southern California ("MWD") and the Coachella Valley Water District ("CVWD") challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will ~~eventually~~in the future be limited to a 4.4 million acre-~~foeet~~ annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of the ~~U. S. Department of Interior~~ ("~~Interior~~") ~~adopted~~implemented Interim Surplus Guidelines ("Guidelines") that would make available additional surplus Colorado River water to California for a period of 15-~~years~~ to provide a "soft-landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-~~foeet~~ apportionment. Under the terms of the Guidelines, the additional surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. MA major reasons for the lack of approved QSA Agreements by the deadline ~~concerns~~included concerns about two early termination provisions contained therein and expected and potential unexpected environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation.—~~However,~~ but unknown future costs of environmental mitigation

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could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if ~~either: (i) during the term of the QSA actual mitigation costs exceed funds available to meet those costs current projections; or (ii) mitigation obligations beyond those contained in the Environmental Plans are imposed by the State and/or federal government.~~

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of the 45- years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the Agreements ~~will~~could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the state's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

Response #2: with the exception of the last sentence added in the second paragraph, the suggested revisions in the above five paragraphs were accepted.

B. PURPOSE OF LOAN GUARANTEE

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the capital investments enhancing water supply based upon IID water conservation. The purpose of the proposed Loan Guarantee is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project. In addition, the proposed Loan Guarantee would provide financial assistance to the parties to the Agreements for expected and unexpected environmental mitigation costs.

Response #3: the revisions suggested in the above paragraph were not accepted. The CIEDB does not have the statutory authority to use CIEDB funds in the Guarantee Trust Fund as a grant for either expected or unexpected environmental mitigation costs.

C. NATURE OF LOAN GUARANTEE

The Loan Guarantee will consist of a commitment by the CIEDB to:

(1) Unconditionally guarantee the repayment in full of any outstanding debt incurred by IID to fund capital improvements for the creation of Conserved Water provided for under the QSA

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Agreements, in an amount not to exceed \$150 million in 2003 dollars, in the event that the QSA term ends prior to Year 45 of the QSA or, in lieu of an unconditional guarantee, a reasonable economic equivalent. Such guarantee shall be without any rights of recourse, subrogation, reimbursement, contribution, or indemnity against IID;

Response #4: the revisions suggested in the above paragraph were not accepted. Any Loan Guarantee will be a conditional guarantee subject to the limitations described in #12 and #13 of the Term and Conditions of the Guarantee below, among other things. An agreement detailing reimbursement and indemnification provisions will be required to be executed at the time any Loan Guarantee is provided.

(2) Guarantee that to the extent any or all of the \$150 million is not used to guarantee IID debt as described above, as a result of the outstanding debt declining below \$150 million, then the amount not so used shall be available to pay Unexpected Environmental Mitigation Costs, as that term is defined in the QSA Agreements, without any rights of recourse, subrogation, reimbursement, contribution or indemnity against any of the parties. If CIEDB, SDCWA, MWD or CVWD makes available to IID and the obligee of IID's outstanding debt an acceptable financially-equivalent replacement guarantee, then the Loan Guarantee shall be available to guarantee the payment of Unexpected Environmental Mitigation Costs as described in this section C(2); and

Response #5: The revisions suggested in the above paragraph were not accepted. The CIEDB does not have the statutory authority to use CIEDB funds in the Guarantee Trust Fund for a grant for unexpected environmental mitigation costs.

(3) Guarantee the repayment in full of any outstanding debt incurred by MWD, CVWD, SDCWA, or an entity such as a joint powers authority to fund environmental mitigation costs related to the QSA Agreements, to the extent any or all of the \$150 million is not used to guarantee IID debt or pay Unexpected Environmental Mitigation Costs as described above.

Response #6: The revisions suggested in the above paragraph were not accepted. The draft criteria distributed for public comment pertained to a potential loan guarantee for IID only.

DC. APPLICATION PROCESS

1. **Preliminary Loan Guarantee Application.** IID, MWD, CVWD and SDCWA (each an "Applicant") (QUESTION: DOES THE JPA NEED TO BE AN APPLICANT IN ORDER TO LATER RECEIVE A LOAN GUARANTEE?) shall submit a joint Preliminary Loan Guarantee Application to the CIEDB at least 35 days before the date that the CIEDB's board of directors ("Board") will consider the adoption of a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Application must include: (1) ~~an~~-adopted resolutions of IID's the Applicants' governing bodies requesting a Preliminary Loan Guarantee Commitment; (2) a findings acknowledging that the Loan Guarantee will be subject to the Terms and Conditions listed in Section E-D below; and (3) other information determined necessary by CIEDB's Executive Director.

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Response #7: The revisions suggested in the above paragraph were not accepted. See response #6.

2. **Preliminary Loan Guarantee Commitment.** If the Board approves a Preliminary Loan Guarantee Application, [the Applicants](#) will be provided with a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the [Agreements](#), the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board. [\(BECAUSE WE WON'T KNOW IF IID WILL NEED THE LOAN GUARANTEE UNTIL MAYBE SOMETIME IN THE 2020's, WE WON'T KNOW WHAT'S AVAILABLE FOR ENVIRONMENTAL MITIGATION UNTIL THEN. SO, IT SEEMS A LOAN GUARANTEE APPLICATION FOR MITIGATION COSTS WOULD NOT BE SUBMITTED UNTIL LONG AFTER THIS 2009 DEADLINE. IS THAT A PROBLEM?\)](#)

Response #8: The revisions suggested in the above paragraph were not accepted. See response #6. In regards to questions in parenthesis, the above language already makes it clear that the Board may extend the December 31, 2009 expiration date.

3. **Loan Guarantee Application.** [For each element of the Loan Guarantee described in Section C above, the relevant Applicant or Applicants](#) shall submit a Loan Guarantee Application to the CIEDB at least 75 days before the date that the Board will consider the approval of a Loan Guarantee. The Loan Guarantee Application must include the following: (1) substantially final draft ~~B~~ bond documents for ~~any~~ the bonds to be guaranteed by the Loan Guarantee ("Bonds"), including the indenture, official statement and loan agreement; (2) detailed information and documentation demonstrating that ~~IID~~ [the Applicant or Applicants](#), the projects to be financed with the Bonds, and the Bonds comply with the Terms and Conditions listed in Section [E below](#); and (3) other information and documentation deemed necessary by CIEDB's Executive Director.

Response #9: The revisions suggested in the above paragraph were not accepted. See response #6.

4. **Loan Guarantee.** If the Board approves the Loan Guarantee Application, [the Applicant or Applicants](#) will be issued a Loan Guarantee. The Loan Guarantee will be subject to the Terms and Conditions contained in Section [E below](#) and any other provisions required by the Board.

Response #10: The revisions suggested in the above paragraph were not accepted. See response #6.

E. TERMS AND CONDITIONS OF LOAN GUARANTEE

Any Loan Guarantee will be subject to the following terms and conditions:

¹ Defined in Government Code [s](#)Section 63010 (e).

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1. **Eligible Borrower.** The Applicant or Applicants must provide documentation that they meets the definition of “Sponsor” contained in Government Code Section 63010(u). Any Bonds to be guaranteed may be issued by the Applicants or another conduit issuer on behalf of the Applicants.

Response #11: The revisions suggested in the above paragraph were not accepted. See response #6.

2. **Eligible Project.** The projects to be financed with Bond proceeds (“Project”) must be consistent with the definitions of “Public Development Facilities” or “Economic Development Facilities” contained in Government Code Sections 63010(g), (p) and (q). Additionally, the Project must be for the purpose of the Applicant or Applicants meeting their contractual obligations under the Agreements.

Response #12: The revisions suggested in the above paragraph were not accepted. CIEDB funds contained an appropriation limitation limiting their use to Public Development Facilities and are thus not eligible to be used for Economic Development Facilities.

3. **Eligible Costs.** The costs of the Projects must be consistent with the definition of “Cost” contained in Government Code Section 63010(f).
4. **Amount.** The amount of any individual Loan Guarantee shall be approved by adopted resolution of the Board. The maximum amount of all Loan Guarantees must not exceed an amount contained in the Guarantee Trust Account (see #12) and allowed by the Reserve Account Requirement (see #13).
5. **Credit Rating Requirement.** Prior to the execution of a Loan Guarantee, the Applicant or Applicants must provide a letter from either Moody’s Investor’s Service, Standard & Poor’s Ratings Service, or Fitch Ratings that the Bonds would be rated at least Baa1/BBB+/BBB+, respectively, if the early termination risk did not exist.

Response #13: The revisions suggested in the above paragraph were not accepted. See response #6.

6. **Debt Service Reserve Fund.** Any Bonds must have a debt service reserve fund funded at the maximum amount authorized under the Internal Revenue Code for tax-exempt debt.

Response #14: The revision suggested in the above paragraph was accepted.

7. **Amortization Pattern of Bonds.** Any Bonds must be structured with level debt service unless the Board approves specific exceptions are approved by the Board as part of the Loan Guarantee.

Response #15: The revisions suggested in the above paragraph were accepted.

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8. **Term of Bonds.** The term of ~~any~~~~the~~ Bonds shall not exceed 30 years.

Response #16: The revision suggested in the above paragraph was accepted.

9. **Fixed Rate.** The interest rate on ~~any~~~~the~~ Bonds must be a fixed rate.

Response #17: The revision suggested in the above paragraph was accepted.

10. **Required~~HD~~ Resolution.** ~~Each~~~~HD's~~ Loan Guarantee Application must contain a certified copy of the adopted resolution required by Government Code Section 63041(a).

Response #18: The revisions suggested in the above paragraph were not accepted. See response #6.

11. **Prevailing Wages.** The Project must comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, including the payment of prevailing wages.

12. **Funding of Guarantee Trust Account.** Upon approval of the Criteria, Priorities and Guidelines, the CIEDB will commit \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060. Upon approval of a Preliminary Loan Guarantee Commitment, the CIEDB will commit the \$20 million to a sub account within the Guarantee Trust Fund named the ~~Imperial Irrigation District~~~~QSA~~ Infrastructure Guarantee Trust Account ("~~HD~~~~QSA~~ Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or the Loan Guarantee is in effect, funds in the ~~QSA~~~~HD~~ Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the ~~QSA~~~~HD~~ Guarantee Trust Account shall remain within the ~~QSA~~~~HD~~ Guarantee Trust Account, subject to the above-described pledge.

Response #19: The revisions suggested in the above paragraph were not accepted. See response #6.

13. **Reserve Account Requirement.** If the CIEDB determines that the amount in the ~~QSA~~~~HD~~ Guarantee Trust Account is below any Reserve Account Requirement established pursuant to Government Code section 63064, the CIEDB shall follow the procedures contained therein. Currently, those procedures are as follows:

- (1) If the CIEDB determines that the amount in the ~~QSA~~~~HD~~ Guarantee Trust Account is below the Reserve Account Requirement, the Executive Director shall immediately certify in writing to the Joint Legislative Budget Committee, the Speaker of the Assembly, the Senate Committee on Rules, and the Governor, the sum required to restore the ~~QSA~~~~HD~~ Guarantee Trust Account to the Reserve Account Requirement.

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- (2) Upon making the certification, the Executive Director shall ask the Governor to request an appropriation, and shall use his or her best efforts to have a sum requested and appropriated.
- (3) Upon receiving notice that the amount in the QSA~~IID~~ Guarantee Trust Account is below the Reserve Account Requirement, the Legislature may, at its discretion, choose to appropriate and pay to the CIEDB for deposit into the QSA~~IID~~ Guarantee Trust Account that sum that would restore the amount in that account to an amount equal to the Reserve Account Requirement.

Response #20: The revisions suggested in the above paragraphs were not accepted. See response #6.

~~14. **Reimbursement and Indemnification Agreement.** Simultaneous with the execution of a Loan Guarantee, CIEDB and IID shall execute an agreement detailing, among other things, IID representations and CIEDB rights to reimbursement and indemnification acceptable to CIEDB.~~

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Response #21: The revisions suggested in the above paragraph were not accepted. Simultaneous with the execution of any Loan Guarantee, the CIEDB shall require IID to execute an agreement detailing, among other things, IID representations and CIEDB rights to reimbursement and indemnification.

~~15-14. **Fees.** Simultaneous with the execution of a Preliminary Loan Guarantee Commitment or Loan Guarantee, the Applicant or Applicants~~IID~~ must reimburse the CIEDB for all out-of-pocket legal and financial advisory fees and internal staff costs incurred in connection with the issuance of the Preliminary Loan Guarantee Commitment or Loan Guarantee. The CIEDB will also charge an annual monitoring fee in an amount to be authorized by the Board at the time the Loan Guarantee is approved.~~

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Response #22: The revisions suggested in the above paragraph were not accepted. See response #6.

RESOLUTION NO. 03-16

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING CRITERIA, PRIORITIES AND GUIDELINES FOR A POTENTIAL LOAN GUARANTEE FOR THE IMPERIAL IRRIGATION DISTRICT.

WHEREAS, the California Infrastructure and Economic Development Bank (the "Infrastructure Bank") was established pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act (California Government Code Section 63000 and following), as now in effect and as it may be amended or supplemented (the "Act"), for the purpose of, among other things, providing financial assistance for public development facilities (as such term is defined in the Act) ("Projects") located in the State of California; and

WHEREAS, the Act requires the Infrastructure Bank to establish criteria, priorities and guidelines ("Criteria") for the selection of Projects to receive assistance from the Infrastructure Bank; and

WHEREAS, the Imperial Irrigation District ("IID") requires financial assistance in order to insure that they can issue revenue bonds required to finance a water supply project consisting of water conservation measures ("Project") designed to ensure that California continues to receive the maximum amount of water from the Colorado River; and

WHEREAS, the Infrastructure Bank has the authority to provide that assistance in the form of a guarantee and desires to establish the Criteria necessary to implement a program for the benefit of the Project ("Program"); and

WHEREAS, Staff has consulted with appropriate state and local agencies in order to obtain input on the proposed Criteria for the Program;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank, as follows:

Section 1. The Board hereby finds that Staff has complied with the appropriate method of obtaining the consultation required by Government Code Section 63040(a) by mailing a notice of the proposed Criteria to all persons on the Infrastructure Bank mailing list for meeting agendas with instructions as to how to obtain a copy of the proposed Criteria and by placing a copy of the proposed Criteria on the web site of the Infrastructure Bank.

Section 2. The proposed Criteria for the Program attached hereto as Attachment 1 is hereby approved by the Board.

Section 4. The Executive Director is authorized to transfer \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund.

PASSED, APPROVED, AND ADOPTED at a meeting of the California Infrastructure and Economic Development Bank on May 28, 2003 by the following vote:

AYES: Hatamiya, Lloyd, Larson

NOES: None

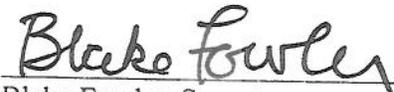
ABSENT: None

ABSTAIN: None



Stanton C. Hazelroth, Executive Director

Attest:



Blake Fowler, Secretary

CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK
Draft Criteria, Priorities and Guidelines
Proposed Imperial Irrigation District Loan Guarantee

A. BACKGROUND

On April 29, 1998, the Imperial Irrigation District ("IID") and the San Diego County Water Authority ("SDCWA") entered into a 45-year water conservation and transfer agreement ("Transfer Agreement") for the transfer of up to 200,000 acre-feet per year of water supply to SDCWA based upon IID water conservation. The Metropolitan Water District of Southern California ("MWD") and the Coachella Valley Water District ("CVWD") challenged the IID/SDCWA transfer, resulting in Key Terms of a Quantification Settlement Agreement ("QSA"), which outlined a series of agreements to settle disputes and allow the Transfer Agreement to proceed ("QSA Agreements" and together with the Transfer Agreement, the "Agreements").

The parties to the QSA are historical users of Colorado River water; a resource relied upon by several states. California's use of Colorado River water will in the future be limited to a 4.4 million acre-foot annual apportionment, or up to 800,000 acre-feet less than California's historical use. In January 2001, the Secretary of Interior adopted Interim Surplus Guidelines ("Guidelines") that would make available additional surplus Colorado River water to California for a period of 15 years to provide a "soft-landing" for California to reduce its long-term use of Colorado River water to its basic 4.4 million acre-foot apportionment. Under the terms of the Guidelines, the surplus water is only available if the QSA Agreements were executed by December 31, 2002. This did not occur and the Secretary of the Interior suspended the special surplus criteria of the Guidelines. As a result, California could lose more than 620,000 acre-feet of Colorado River commencing this year unless the Guidelines are reinstated. Major reasons for the lack of approved QSA Agreements by the deadline included concerns about two early termination provisions contained therein and expected and potential unexpected environmental mitigation costs associated with actions undertaken pursuant to the Agreements.

The first cause for early termination arises from the fact that the Agreements will be executed years before the completion of a Habitat Conservation Plan under federal law and a Natural Community Conservation Plan under State law (collectively, "Environmental Plans"). The funds pledged to implement the Environmental Plans exceed current estimates of the cost of the environmental mitigation, but unknown future costs of environmental mitigation could exceed the financial commitment of the parties to the Agreements. Therefore, the Agreements include an early termination provision if during the term of the QSA actual mitigation costs exceed funds available to meet those costs.

The second cause for early termination involves negotiation of the transfer price. Pursuant to the Agreements, SDCWA is required to pay MWD for exchange of the water supply made available to SDCWA because of IID conservation measures ("Exchange Fee"). The parties have only negotiated the Exchange Fee for 35 out of 45 years in the term of the Agreements. If the Exchange Fee for the remaining years is above a contractually defined maximum, then the

Agreements could terminate in 2037. SDCWA must give notice of its intent to exercise this early termination provision prior to 2017.

When it unanimously approved Assembly Concurrent Resolution No. 251 last fall, the California Legislature recognized the importance of the successful implementation of the Agreements. The Legislature acknowledged that Colorado River water is oversubscribed and that, for many years, California's use has exceeded the state's annual apportionment of 4.4 million acre-feet. The Legislature further recognized that the proposed IID/SDCWA transfer is an integral part of California's plan to reduce its use of Colorado River water. The Legislature found that the potential loss of up to 800,000 acre-feet per year "would have a significant impact on California's economy, environment, and quality of life, and could force a greater reliance on water from the fragile ecosystem of the California Bay-Delta to make up the lost water."

B. PURPOSE OF LOAN GUARANTEE

Early termination would eliminate the contract revenues that IID and its landowners would rely upon to finance the capital investments enhancing water supply based upon IID water conservation. The purpose of the proposed Loan Guarantee is to address these financial risks and enable IID to issue sufficient revenue bonds to finance the water supply project.

C. APPLICATION PROCESS

- 1. Preliminary Loan Guarantee Application.** IID shall submit a Preliminary Loan Guarantee Application to the CIEDB at least 35 days before the date that the CIEDB's board of directors ("Board") will consider the adoption of a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Application must include: an adopted resolution of IID's governing body requesting a Preliminary Loan Guarantee Commitment; a finding acknowledging that the Loan Guarantee will be subject to the Terms and Conditions listed in Section D below; and other information determined necessary by CIEDB's Executive Director.
- 2. Preliminary Loan Guarantee Commitment.** If the Board approves a Preliminary Loan Guarantee Application, IID will be provided with a Preliminary Loan Guarantee Commitment. The Preliminary Loan Guarantee Commitment shall expire on December 31, 2003 if the Agreements are not executed by that date. Upon execution of the QSA, the Preliminary Loan Guarantee Commitment shall expire on December 31, 2009, unless extended in writing by the Board.
- 3. Loan Guarantee Application.** IID shall submit a Loan Guarantee Application to the CIEDB at least 75 days before the date that the Board will consider the approval of a Loan Guarantee. The Loan Guarantee Application must include the following: (1) substantially final draft Bond documents for the bonds to be guaranteed by the Loan Guarantee ("Bonds"¹), including the indenture, official statement and loan agreement; (2) detailed information and documentation demonstrating that IID, the projects to be financed with the

¹ Defined in Government Code section 63010 (e).

Bonds, and the Bonds comply with the Terms and Conditions listed in Section D; (3) other information and documentation deemed necessary by CIEDB's Executive Director.

4. **Loan Guarantee.** If the Board approves the Loan Guarantee Application, IID will be issued a Loan Guarantee. The Loan Guarantee will be subject to the Terms and Conditions contained in Section D and any other provisions required by the Board.

D. TERMS AND CONDITIONS OF LOAN GUARANTEE

Any Loan Guarantee will be subject to the following terms and conditions:

1. **Eligible Borrower.** IID must provide documentation that it meets the definition of "Sponsor" contained in Government Code Section 63010(u). The Bonds to be guaranteed may be issued by IID or another conduit issuer on behalf of IID.
2. **Eligible Project.** The projects to be financed with Bond proceeds ("Project") must be consistent with the definition of "Public Development Facilities" contained in Government Code Sections 63010(p). Additionally, the Project must be for the purpose of IID meeting its contractual obligations under the Agreements.
3. **Eligible Costs.** The costs of the Project must be consistent with the definition of "Cost" contained in Government Code Section 63010(f).
4. **Amount.** The amount of any individual Loan Guarantee shall be approved by adopted resolution of the Board. The maximum amount of all Loan Guarantees must not exceed an amount contained in the Guarantee Trust Account (see #12) and allowed by the Reserve Account Requirement (see #13).
5. **Credit Rating Requirement.** Prior to the execution of a Loan Guarantee, IID must provide a letter from either Moody's Investor's Service, Standard & Poor's Ratings Service, or Fitch Ratings that the Bonds would be rated at least Baa1/BBB+/BBB+, respectively, if the early termination risk did not exist.
6. **Debt Service Reserve Fund.** Any Bonds must have a debt service reserve fund funded at the maximum amount authorized under the Internal Revenue Code for tax-exempt debt.
7. **Amortization Pattern of Bonds.** Any Bonds must be structured with level debt service unless the Board approves specific exceptions as part of the Loan Guarantee.
8. **Term of Bonds.** The term of any Bonds shall not exceed 30 years.
9. **Fixed Rate.** The interest rate on any Bonds must be a fixed rate.
10. **IID Resolution.** IID's Loan Guarantee Application must contain a certified copy of the adopted resolution required by Government Code Section 63041(a).

11. **Prevailing Wages.** The Project must comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code, including the payment of prevailing wages.
12. **Funding of Guarantee Trust Account.** Upon approval of the Criteria, Priorities and Guidelines, the CIEDB will commit \$20 million from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure Guarantee Trust Fund ("Guarantee Trust Fund"), which is established pursuant to Government Code section 63060. Upon approval of a Preliminary Loan Guarantee Commitment, the CIEDB will commit the \$20 million to a sub account within the Guarantee Trust Fund named the Imperial Irrigation District Infrastructure Guarantee Trust Account ("IID Guarantee Trust Account"). As long as either the Preliminary Loan Guarantee Commitment or the Loan Guarantee is in effect, funds in the IID Guarantee Trust Account shall be unconditionally pledged as described in those documents. Interest earnings on the IID Guarantee Trust Account shall remain within the IID Guarantee Trust Account, subject to the above-described pledge.
13. **Reserve Account Requirement.** If the CIEDB determines that the amount in the IID Guarantee Trust Account is below any Reserve Account Requirement established pursuant to Government Code section 63064, the CIEDB shall follow the procedures contained therein. Currently, those procedures are as follows:
 - (1) If the CIEDB determines that the amount in the IID Guarantee Trust Account is below the Reserve Account Requirement, the Executive Director shall immediately certify in writing to the Joint Legislative Budget Committee, the Speaker of the Assembly, the Senate Committee on Rules, and the Governor, the sum required to restore the IID Guarantee Trust Account to the Reserve Account Requirement.
 - (2) Upon making the certification, the Executive Director shall ask the Governor to request an appropriation, and shall use his or her best efforts to have a sum requested and appropriated.
 - (3) Upon receiving notice that the amount in the IID Guarantee Trust Account is below the Reserve Account Requirement, the Legislature may, at its discretion, choose to appropriate and pay to the CIEDB for deposit into the IID Guarantee Trust Account that sum that would restore the amount in that account to an amount equal to the Reserve Account Requirement.
14. **Reimbursement and Indemnification Agreement.** Simultaneous with the execution of a Loan Guarantee, CIEDB and IID shall execute an agreement detailing, among other things, IID representations and CIEDB rights to reimbursement and indemnification acceptable to CIEDB.
15. **Fees.** Simultaneous with the execution of a Preliminary Loan Guarantee Commitment or Loan Guarantee, the IID must reimburse the CIEDB for all out-of-pocket legal and financial advisory fees and internal staff costs incurred in connection with the issuance of the Preliminary Loan Guarantee Commitment or Loan Guarantee. The CIEDB will also charge an annual monitoring fee in an amount to be authorized by the Board at the time the Loan Guarantee is approved.