



The State of New Hampshire
MAY 21 '13 AM 11:18 DAS
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

May 16, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services to approve a loan agreement with the Rye Water District in Rye, NH (VC#160018) in the amount of \$3,400,000 to finance water system improvements under the provisions of RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. effective upon Governor & Council approval. 79% Federal Funds, 21% Capital (General) Funds.

Funding is available in the accounts as follows:

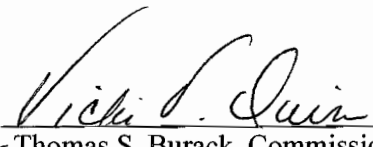
	<u>FY 2013</u>
03-44-44-441010-4789-301-500833	\$2,686,000
Dept Environmental Services, DWSRF Loans, Loans	
03-44-44-441030-0956-034-500161	\$714,000
Dept Environmental Services, 11-253:1:VI-B, DWSRF Match	

EXPLANATION

The purpose of this loan agreement is to authorize the Rye Water District to borrow up to \$3,400,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. These improvements include replacing approximately 9,700 linear feet of water main at the Rye Water District in Rye, NH. The new water mains will improve water quality, and increase water service reliability and reduce water leakage.

The DWSRF is authorized by RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. The U. S. Environmental Protection Agency (EPA) has provided approximately \$104,221,498 to capitalize the DWSRF and the State has provided \$28,249,860 in required matching funds. There is currently a balance of \$8,422,217 in the DWSRF available for new loans. Attached is a tabulation of the DWSRF showing the effect of this loan on the funds available for loans.

We respectfully request your approval.

for 
Thomas S. Burack, Commissioner

Attachments

DEPARTMENT OF ENVIRONMENTAL SERVICES
WATER DIVISION

DRINKING WATER STATE REVOLVING FUND

Supplemental information to Governor and Council request of the loan agreement(s) under RSA 486:14 and N.H. Code of Administrative Rules Env-Dw 1100 et seq. for the public water system(s) listed below.

This request will affect the balance of the loan funds as follows.

	<u>DWSRF</u>
Federal Funds	\$104,221,498
Plus 20% State Match	<u>\$28,249,860</u>
Total Funds Authorized/Available	\$132,471,358
Less Loans Previously Approved	<u>\$124,049,141</u>
Funds Available for Loans	\$8,422,217

New Loan(s) Being Requested

Merrimack Village District	(4,300,000)
Rye Water District	(3,400,000)

Amended Loan Agreement(s)	Initial Amount	Amended Amount	
Pennichuck East Utility (Locke Lake-02)	\$525,000	(\$400,000)	\$125,000
Franklin Water Works	\$3,030,000	(\$3,370,000)	(\$340,000)

Net Change to Loan(s)	<u>(\$7,915,000)</u>
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Balance Available After G & C Approval	<u><u>\$507,217</u></u>
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NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES
Drinking Water State Revolving Loan Program

<u>DWSRF Fund Available For Loans</u>	<u>Amount</u>
1997 - 2006 Capitalization Grants	\$84,740,500
Plus State Match	\$16,952,100
Less Setasides	<u>(\$18,990,542)</u>
Total 1997-2006 Funds Available for Loans	\$82,702,058
2007 Capitalization Grant	\$8,229,000
Plus State Match	\$1,646,160
Less Setasides	<u>(\$2,550,990)</u>
Total 2007 Funds Available for Loans	\$7,324,170
2008 Capitalization Grant	\$8,146,000
Plus State Match	\$1,629,200
Less Setasides	<u>(\$2,525,260)</u>
Total 2008 Funds Available for Loans	\$7,249,940
2009 Capitalization Grant	\$8,146,000
Plus State Match	\$1,629,200
Less Setasides	<u>(\$2,525,260)</u>
Total 2009 Funds Available for Loans	\$7,249,940
2010 Capitalization Grant	\$13,573,000
Plus State Match	\$2,714,600
Less Setasides	<u>(\$4,712,120)</u>
Total 2010 Funds Available for Loans	\$11,575,480
2011 Capitalization Grant	\$9,418,000
Plus State Match	\$1,883,600
Less Setasides	<u>(\$2,919,580)</u>
Total 2011 Funds Available for Loans	\$8,382,020
2012 Capitalization Grant	\$8,975,000
Plus State Match	\$1,795,000
Less Setasides	<u>(\$2,782,250)</u>
Total 2012 Funds Available for Loans	\$7,987,750
Total 1997-2012 Funds Available for Loans	\$132,471,358

DRINKING WATER STATE REVOLVING FUND PROGRAM

ORIGINAL LOAN AGREEMENT

III. Disbursements shall be made on a periodic basis, as requested by the Loan Recipient, but not more frequently than monthly, subject to the approval of the amount of each Disbursement by

1 the State. The State shall approve the amount requested if it determines that the costs covered by
2 the request are eligible under Env-Dw 1104.01, as applicable. Interest on any Disbursement
3 shall accrue from the date of the Disbursement at the rate of 1% per annum computed on the
4 basis of 30-day months and 360-day years until the date of Substantial Completion ("Substantial
5 Completion") of the Project. Such interest may be paid (1), semi-annually, prior to the
6 commencement of Loan repayment, (2) prior to the commencement of Loan repayment, (3) at
7 the time of the first Loan repayment, or (4) added to the principal outstanding Loan balance at
8 the option of the Loan Recipient so long as the Loan Recipient's authority to borrow is not
9 exceeded.

10
11 IV. Upon Substantial Completion of the Project, the aggregate of the Disbursements shall be
12 consolidated by a Promissory Note ("Note") of the Loan Recipient issued under and in
13 accordance with the applicable provisions of the Municipal Finance Act, RSA 33, as amended
14 and supplemented, including the provisions of RSA 486:14. The Note shall be substantially in
15 the form of Exhibit B.

16
17 V. The interest rate applicable to the Note will be determined in accordance with RSA 486:14
18 and Env-Dw 1100 et seq. Such interest rate will be the lesser of 2.72 % and the adjusted market
19 rate as determined by the 11-GO Bond Buyer Index in effect on the date of the Note.

20
21 VI. The Loan Recipient hereby authorizes the State to compute the payments of principal and
22 interest on the Note. The principal shall be paid in full within **twenty (20)** years from the date of
23 the Note. Note payments shall commence on the first day of the month following the first
24 anniversary of the Substantial Completion date of the Project or the first anniversary of the
25 Scheduled Completion date of the project, whichever is earlier. The Scheduled Completion date

1 is hereby determined to be **January 1, 2015**; however, should the project experience excusable
2 delay beyond this date, an extension may be granted by the Commissioner upon request in
3 writing by the Loan Recipient. In no event shall Note payments commence later than ten years
4 from the effective date of this agreement.

5
6 VII. The Loan Recipient reserves the right to prepay, at any time and without penalty, all or any
7 part of the outstanding principal of the Note.

8
9 VIII. In the event of a default in the full and timely remittance of any Note payment, any State
10 Aid Grant funds payable to the Loan Recipient under RSA 486:1 may be offset against and
11 applied to the payment of any obligations that are due hereunder. The Loan Recipient agrees to
12 be liable for all costs of collection, legal expenses, and attorney's fees incurred or paid by the
13 State in enforcing this agreement or in collecting any delinquent payments due hereunder.

14
15 IX. No delay or omission on the part of the State in exercising any right hereunder shall operate
16 as a waiver of such right or of any other right under this agreement. A waiver on any one
17 occasion shall not be construed as bar to any right and/or remedy on any future occasion.

18
19 X. The Loan Recipient acknowledges that by accepting the Loan it will be a sub-recipient of
20 federal financial assistance and, as such, subject to requirements of the federal Single Audit Act
21 of 1984, as amended by the Single Audit Act Amendments of 1996 (the "SAA"). The Loan
22 Recipient further acknowledges that, if the Loan Recipient expends more than \$500,000 in
23 federal financial assistance from all sources in any fiscal year, it must perform an SAA audit in
24 accordance with the requirements of Office of Management and Budget Circular A-133. In that
25

1 event, the Loan Recipient shall provide the State with a copy of the SAA audit report within nine
2 months of the end of the audit period.

3
4 XI. The Loan Recipient agrees to permit the Comptroller General of the United States, an
5 appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of
6 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials, or of
7 the State of New Hampshire to have access to and the right to:

8
9 (i) Examine any of the Borrower's, the contractor's or any subcontractor's records
10 that pertain to and involve transactions relating to this Agreement, the Construction
11 Contract, the Engineering Contract or a subcontract thereunder; and
12

13 (ii) Interview any officer or employee regarding such transactions.
14

15 The Borrower shall insert subparagraphs (i). and (ii). in the Construction
16 Contract and require the Contractor to insert subparagraphs (i). and (ii). in all subcontracts
17 thereunder.
18

19 XII. Davis-Bacon (DB) prevailing wage requirements apply to the Project in accordance with the
20 federal fiscal year (FY) 2012 Consolidated Appropriations Act (P.L. 112-74). The Loan
21 Recipient shall insert in full in any contract in excess of \$2,000 which is entered into for Project
22 construction the standard Davis-Bacon contract clause as specified by 29 CFR §5.5(a). The
23 Loan Recipient shall obtain the wage determination for the locality in which a covered activity
24 subject to DB will take place prior to issuing requests for bids, proposals, quotes or other
25 methods for soliciting contracts (solicitation) for activities subject to DB. These wage

1 determinations shall be incorporated into solicitations and any subsequent contracts. Prime
2 contracts must contain a provision requiring that subcontractors follow the wage determination
3 incorporated into the prime contract.
4

5 XIII. The Loan Recipient shall not knowingly award a construction contract to a contractor
6 which has been debarred or suspended by the federal government. The Loan Recipient or its
7 agent shall compare the names of contractors who have bid on the project against the searchable
8 list in the federal "Excluded Parties List System" (EPLS) database, which can be found at
9 <https://www.epls.gov/>; and
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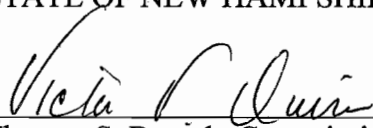
11 XIV. Pursuant to 40 CFR, Section 33.301, the Loan Recipient shall make good faith efforts to
12 utilize small, minority and women's business enterprises whenever procuring construction,
13 equipment, services and supplies under an EPA financial assistance agreement, and shall require
14 that prime contractors also comply. Records documenting compliance with the six good faith
15 efforts shall be retained.
16

17 XV. The effective date of this agreement shall be the date of its approval by the Governor and
18 Executive Council. This agreement may be amended, waived, or discharged only by a written
19 instrument signed by the parties hereto and only after approval of such amendment, waiver, or
20 discharge by the Governor and Executive Council.
21

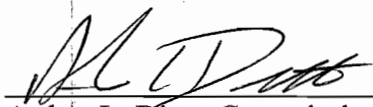
22 XVI. This agreement shall be construed in accordance with the laws of the State of New
23 Hampshire and is binding upon and inures to the benefit of the parties and their respective
24 successors. The parties hereto do not intend to benefit any third parties and, consequently, the
25 agreement shall not be construed to confer any such benefit.

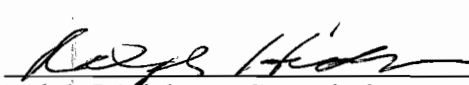
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2 XVII. This agreement, which may be executed in a number of counterparts, each of which shall
3 be deemed an original, constitutes the entire agreement and understanding between the parties
4 and supersedes all prior agreements and understandings relating thereto. Nothing herein shall be
5 construed as a waiver of sovereign immunity, such immunity being hereby specifically reserved.
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9 STATE OF NEW HAMPSHIRE by:

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11 Thomas S. Burack, Commissioner
12 Environmental Services
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RYE WATER DISTRICT by:

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15 Arthur L. Ditto, Commissioner
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18 Ralph J. Hickson, Commissioner
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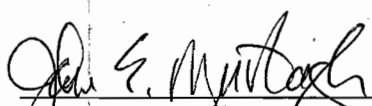
20 
21 John E. Murtagh, Commissioner
22
23
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EXHIBIT A

STATE OF NEW HAMPSHIRE

DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM

PROJECT DESCRIPTION

The Rye Water District has applied for a Loan to be used for water system improvements including replacement of approximately 8500 linear feet of existing water mains on Route 1A, installation of approximately 1200 linear feet of new water mains on Dow Road and Lafayette Road, and related water system improvements.

1
2 **EXHIBIT B**

3 **STATE OF NEW HAMPSHIRE**

4 **DRINKING WATER STATE REVOLVING LOAN FUND PROGRAM**

5 **PROMISSORY NOTE AND REPAYMENT SCHEDULE**

6
7 The Rye Water District ("Loan Recipient") promises to pay to the Treasurer of the State
8 of New Hampshire the sum of _____ Dollars (_____) in
9 installments on the anniversary date of this Promissory Note ("Note") in each year as set forth
10 below, commencing on the first principal payment date and annually thereafter on each principal
11 payment date, including interest at the rate of _____% per annum, computed on the basis of
12 30-day months and 360-day years, in the respective years set forth below. A sum of _____% of
13 each principal and interest installment payment will be forgiven at the time each installment is
14 due.

15 REPAYMENT SCHEDULE

16 Year Principal Interest Total P&I Payment Due

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19 3
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1 This Note is issued under and by virtue of the New Hampshire Municipal Finance Act, an
2 agreement duly entered into by the Loan Recipient and the Drinking Water State Revolving Loan
3 Fund Program ("Agreement"), a vote of the Loan Recipient at its District Meeting on ____ -
4 _____, _____, and a duly-adopted resolution of the Governing Body of the Loan Recipient
5 and is issued for the purpose of financing the cost of the Project as described in said Resolution
6 and Agreement.
7

8
9 The Loan Recipient reserves the right to prepay, at any time and without penalty, all or
10 any part of the outstanding principal on this Note.
11

12 The terms and provisions of the Agreement are hereby incorporated in and made a part of
13 this Note to the same extent as if said terms and provisions were set forth in full herein.
14

15 It is hereby certified and recited that all acts, conditions, and things required to be done
16 precedent to and in the issuing of this Note have been done, have happened, and have been
17 performed in regular and due form and, for the payment hereof when due, the full faith and credit
18 of the Loan Recipient are hereby irrevocably pledged.
19
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1 IN WITNESS whereof the Loan Recipient has caused this Note to be signed by its
2 _____, and the seal of the Loan Recipient to be affixed hereto, as of the
3 ____ day of _____, 2015.
4

5 RYE WATER DISTRICT by:
6

7 _____
Arthur L. Ditto, Commissioner
8

9 _____
Ralph J. Hickson, Commissioner
10

11 _____
John E. Murtagh, Commissioner
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13
14
15 (Seal)
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