



The State of New Hampshire  
**DEPARTMENT OF ENVIRONMENTAL SERVICES**  
 MAY 20 '13 AM 11:25 DAS



**Thomas S. Burack, Commissioner**

May 13, 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 Merrimack Village District in Merrimack, NH (VC#160038) in the amount of \$4,300,000 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	\$3,397,000
Dept Environmental Services, DWSRF Loans, Loans	
03-44-44-441030-1778-034-500161	\$903,000
Dept Environmental Services, 11-253:1:VI-B, DWSRF Match	

**EXPLANATION**

The purpose of this loan agreement is to authorize the Merrimack Village District to borrow up to \$4,300,000 from the Drinking Water State Revolving Loan Fund (DWSRF) to finance water system improvements. These improvements include construction of an iron and manganese treatment facility at the Merrimack Village District water system in Merrimack, NH. The treatment facility will improve water quality, and allow the water system to come into compliance with the secondary standards for iron and manganese.

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.

  
 Thomas S. Burack, Commissioner

Attachments

Her Excellency, Governor Margaret Wood Hassan  
and the Honorable Council

Page 2

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			\$28,249,860
Total Funds Authorized/Available			<u>\$132,471,358</u>
Less Loans Previously Approved			<u>\$124,049,141</u>
Funds Available for Loans			\$8,422,217
<b>New Loan(s) Being Requested</b>			
Merrimack Village District			(4,300,000)
Rye Water District			(3,400,000)
<b>Amended Loan Agreement(s)</b>	<b>Initial Amount</b>	<b>Amended Amount</b>	
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>
<b>Balance Available After G &amp; C Approval</b>			<u><u>\$507,217</u></u>

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	<b>\$82,702,058</b>
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	<b>\$7,324,170</b>
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	<b>\$7,249,940</b>
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	<b>\$7,249,940</b>
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	<b>\$11,575,480</b>
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	<b>\$8,382,020</b>
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	<b>\$7,987,750</b>
Total 1997-2012 Funds Available for Loans	<b>\$132,471,358</b>



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 **July 1, 2015**; however, should the project experience excusable delay  
2 beyond this date, an extension may be granted by the Commissioner upon request in writing by  
3 the Loan Recipient. In no event shall Note payments commence later than ten years from the  
4 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  
10

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.

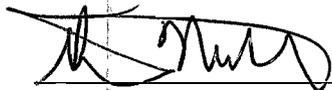
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XVII. This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties and supersedes all prior agreements and understandings relating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

STATE OF NEW HAMPSHIRE by:

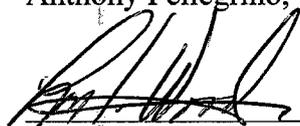
MERRIMACK VILLAGE DISTRICT by:

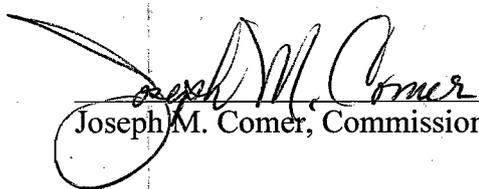
  
Thomas S. Burack, Commissioner  
Environmental Services

  
Thomas Nutting, Commissioner

  
George Keller, Commissioner

  
Anthony Pellegrino, Commissioner

  
Lon Woods, Commissioner

  
Joseph M. Comer, Commissioner



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

15  
16 REPAYMENT SCHEDULE

17

<u>Year</u>	<u>Principal</u>	<u>Interest</u>	<u>Total P&amp;I</u>	<u>Payment Due</u>
18 1				
19 2				
20 3				
21 4				
22 5				
23 6				
24 7				
25 8				
26 9				
27 10				
28 11				
29 12				
30 13				
31 14				
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35 18				

1 19  
2 20

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

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

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

15  
16 It is hereby certified and recited that all acts, conditions, and things required to be done  
17 precedent to and in the issuing of this Note have been done, have happened, and have been  
18 performed in regular and due form and, for the payment hereof when due, the full faith and credit  
19 of the Loan Recipient are hereby irrevocably pledged.

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25

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 \_\_\_\_\_, 2013.

4  
5 MERRIMACK VILLAGE DISTRICT by:

6  
7 \_\_\_\_\_  
Thomas Nutting, Commissioner

8  
9 \_\_\_\_\_  
George Keller, Commissioner

10  
11 \_\_\_\_\_  
Anthony Pellegrino, Commissioner

12  
13 \_\_\_\_\_  
Lon Woods, Commissioner

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15 \_\_\_\_\_  
Joseph M. Comer, Commissioner

16  
17  
18 (Seal)

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