



May 17, 2016

SUBJECT: Bad River Band of Lake Superior Tribe of Chippewa Indians  
Loan Closing Instructions  
Water and Environmental Programs  
Sewer – Loan - \$459,000.00  
Sewer Grant \$1,997,000.00

TO: Area Specialist, Lance Ausing  
Spooner Area Office

Eric Arnold  
Attorney At Law

This loan is being made in accordance with applicable Rural Utilities Service regulations, our Letter of Conditions dated April 8, 2015, the closing instructions from Rural Development's Office of General Counsel and the following conditions. All requirements identified by USDA General Counsel must be satisfied prior to closing.

We have reviewed the processing files for this loan and have formulated the following closing requirements:

Docket Item:

- 1-1 The Tribe must maintain registration under the System for Awards Management (SAM) web site throughout the loan and grant disbursement period. Prior to loan closing, Area Office will obtain the SAM expiration date and enter this into CPAP. Area Office will also document their discussions with the Tribe regarding the ongoing need to maintain this registration process throughout the loan and grant disbursement period.
- 3-2 Area Specialist will review and concur in the proposed Audit and Accounting Agreement prior to closing.
- 3-3 The Tribal Attorney, will provide evidence that he will perform the services required in RUS Bulletin 1780-7, Legal Services Agreement prior to closing the loan and grant.
- 3-7 An Emergency Response Plan (ERP) and Vulnerability Assessment(VA) must be completed as soon as construction is substantially complete. If substantial completion takes place after loan closing a certification will be obtained from the Tribe of their intent to complete the ERP and VA process. The certification will be obtained prior to loan closing.
- 3-8 The proposed Operating Budget and Cash Flow Statements must indicate that the Tribe is willing to charge user rates sufficient to cover all operating and maintenance costs, debt service, debt service reserves and short lived assets replacement funds necessary to maintain sustainable utilities and that are consistent with CPAP underwriting. The

**Rural Development • Wisconsin State Office**  
5417 Clem's Way • Stevens Point, WI 54482  
Voice (715) 345-7610 • Fax (855) 731-0161

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- budget may contain a combination of user charges and tribal contributions in order to maintain the sustainability of the water utility. The operating budget must be completed and signed prior to the start of construction.
- 3-11 The Tribe will pass a Code of Conduct which is in substantial compliance with RUS Instruction 1780.7 (a) prior to advertising for construction bids.
  - 3-14 The Tribe will certify as to their eligibility for the loan and grant funds in accordance with Form AD 1047 “Certification Regarding Debarment, Suspension, and Other Responsibility Matters” prior to advertising for construction bids.
  - 3-21 The Tribe will disclose any conflict of Interest in regard to any known relationship with Agency employees prior to advertising for construction bids.
  - 3-22 Loan Specialist will document processing conferences and the discussion of these closing instructions.
  - 3-26 The docket does not contain any County or BIA permits for construction in these permitted areas. If during construction, it is determined that encroachment into these areas is unavoidable, a permit from these authorities will be obtained prior to any potential encroachments.
  - 3-28 A Final Title Opinion will be obtained from the Tribal attorney for the tracts of land that include wells #1, #2, #3 along with the pump house, proposed well #4 and the tract of land that will contain the new water tower. The final title opinions will be presented on RD Form 1927-10 and will supplement the preliminary title opinions for tracts 2020 and 2024 as identified in the Preliminary Title Opinions dated May 10, 2016. Any intervening encumbrances, exceptions or reservations to the title of these tracts will be removed prior to loan closing.
  - 3-34 A Rules regulations and Rates Ordinance must be passed for the water utility to assure Revenues are sufficient to cover all operating costs, debt service, and all reserves for short lived assets and debt payment prior to loan closing. The Loan Specialist will certify that they have reviewed the rates in effect at loan closing and that in their opinion the rates are sufficient to cover all costs of operating the utility along with any Tribal supplement to the utility.
  - 3-35 Evidence of the interim financing will be provided by the Tribe prior to the award of bids.
  - 3-41 An electronic Funds Transfer account must be set up with the Tribe’s bank at least two weeks prior to loan closing and a Preauthorized Debit Agreement must be obtained at loan closing for the ongoing payment of principal and interest according to the bond schedule. Verification that the Tribe has established a preauthorized debit account on Form RD 3550-28 Authorization Agreement For Preauthorized payments must be obtained prior to loan closing.
  - 3-43 The Tribe will complete a loan resolution on in the format prescribed by RUS Bulletin 1780-27 for Public Bodies. The Tribe must execute the Certification on page three of the Loan Resolution at bond closing. The Loan Specialist will complete a second review of the Debarment list just prior to the permanent bond closing. Place the epls screen in this position prior to loan closing.
  - 3-44 The Tribe will provide evidence of Insurance coverage for Liability, Workers Compensation, Property and Position Fidelity Bonding in amounts sufficient to meet the letter of conditions and which are in effect at the time of loan closing.

- 3-45 The Tribe must provide evidence from Bond counsel that the Tribe has been properly organized and that Bond proceedings have taken place in a manner which will result in the issuance of a valid and legally binding bond issue. The original Revenue bond prepared and executed in accordance with bond proceedings authorized by a recognized bond counsel will be obtained at closing and submitted to the Rural Development State Office for retention.
- 3-46 The Revenue Bond issued must not contain any defeasance provisions which would affect any conditions or contractual provisions of the Bond.
- 3-47 A Water System Grant Agreement in accordance with RUS Bulletin 1780-12 will be obtained prior to grant disbursement.

All provisions outlined in docket four must be complied with throughout the bidding, award, and preconstruction phases of the project.

Construction folder:

- Establish and complete the 402-2. Authorize all invoices to be paid and compare 402-2 with construction account.
- Complete Monthly construction inspections on every project and complete Form RD 1924-12 to document inspection and progress of project.

Prior to Rural Development loan closing the Commission will be required to execute a Pre-authorized Payment Agreement that will go into effect prior to the date of the first payment becoming due. A bank account will be established for payments to be withdrawn.

Discuss prior to or at loan closing with the Commission and document the discussion on the closing instructions:

- Graduation/refinancing requirements (item 2 Loan Resolution)
- Loan payment due dates and amount of payment
- Prior to loan closing review the financial records of the Commission and ascertain that they comply with Government Accounting Standards
- Annual budget, audited financial statements and quarterly reports (items 12 & 13 Loan Resolution)
- Evidence that a construction account is established.

A meeting needs to be scheduled between the Commission, their attorney and Rural Development to determine that all closing instructions can be met.

Sincerely,

Brian J. Deaner  
Community Programs Director

Cc:

