



Monterey County

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Board Report

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Approve and authorize the write off of \$29,429.27 in delinquent principal, and to forgo collection of approximately \$8,100 in interest and late fees, as of May 5, 2015, on a Small Business Revolving Loan Fund loan made to Craig Heath, doing business as Castroville Ace Hardware, as uncollectible debt.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

Approve and authorize the write off of \$29,429.27 in delinquent principal, and to forgo collection of approximately \$8,100 in interest and late fees, as of May 5, 2015, on a Small Business Revolving Loan Fund loan made to Craig Heath, doing business as Castroville Ace Hardware, as uncollectible debt.

SUMMARY:

The County established a Small Business Revolving Loan Fund (SBRLF) to assist businesses that could not qualify for conventional financing and thereby support private sector job creation and retention. The Board is asked to authorize the Auditor-Controller to write off one SBRLF loan as uncollectible debt due to unusual circumstances that make collection unlikely.

DISCUSSION:

The County, through various Program Administrators, has operated the SBRLF since 1990. Since the County funded its first loan, the SBRLF has loaned almost \$9.3 million dollars in to more than 130 small businesses and supported the creation or retention of more than 1,000 jobs. The SBRLF was established to loan money to businesses that could not obtain conventional financing. Since it was established, and notwithstanding the inherently risky nature of the SBRLF loan portfolio, Monterey County's SBRLF has maintained a loan loss portfolio of 9.4%, less than half the industry expectation.

In 1999, Craig Heath purchased Castroville Ace Hardware, receiving a \$100,000 loan from the County's SBRLF and two loans, \$290,000 and \$30,000, from Community Bank of Central California (now Rabobank N.A.). Mr. Heath paid regularly on his SBRLF loan until July 2009 when the loan matured and a balloon payment became due; he has repaid \$102,679.50 in principal and interest. During this time period, Mr. Heath has suffered personal setbacks. County staff has worked diligently with Mr. Heath on repayment but, given his circumstances, were unsuccessful. Mr. Heath has relocated to North Dakota.

County collection efforts include tracking an anticipated sale of the business. In June 2013, Mr. Heath to sell the business and represented to County staff that he would repay

the SBRLF loan balance from sale proceeds. Accordingly, the County submitted its claim to the law firm handling the sale escrow which, in turn, acknowledged the debt. Sale of the business has not closed, to date, and has become embroiled in litigation. Mr. Heath was sued by both Rabobank-for approximately \$238,712, plus accruing interest, late charges and attorneys' fees due on the two Rabobank loans-and by the purchaser of the business.

The pending litigation and other factors indicate that there is little possibility of collecting the SBRLF loan balance. These reasons include:

- The litigation has made completion of the sale of the business, and ultimate payment of the SBRLF loan balance from resulting escrow proceeds, unlikely.
- The SBRLF loan is subordinate to Rabobank's claims (per normal policy for SBRLF loans), which are approximately \$238,712, plus accruing interest, late charges, and attorneys' fees.
- The purchase price for the business, if the sale is ever consummated, is at most \$255,000 and may be less, i.e., an amount insufficient to pay both Rabobank's claims and the SBRLF loan balance.
- Mr. Heath's circumstances indicate continuing inability to pay the RLF loan balance; in addition to his personal situation, he faces the possibility of two judgments against him, further detracting from his ability to pay the SBRLF loan.
- Mr. Heath's relocation, out of state, would make enforcement of a County judgment cumbersome and expensive, e.g., locating bank accounts and other assets in North Dakota to satisfy a judgment would take place long distance and would likely require retention of out-of-state counsel familiar with North Dakota collections law.
- In collecting a judgment for the SBRLF loan, the County would be competing with Rabobank and other creditors for Mr. Heath's assets.

In summary, the potential for collecting the unpaid amounts due on the SBRLF is remote. Assuming collection is possible to some degree, the added expense of collection efforts in these circumstances could easily offset recovery, resulting in a net loss to the County.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the loan and associated court documents and concurs that recovery is unlikely. The Auditor-Controller has reviewed the fiscal provisions of the proposed write off and concurs with the recommendation.

FINANCING:

These actions will have no impact on the General Fund. The recommended action will recognize the loss of \$29,429.27, and \$8,100 in interest and late fees, that will not be repaid to Fund 013 (Community Development) Organizational Unit 8199. The recommendation is consistent with grant requirements.

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