

**TO:** Board Members

**THROUGH:** Kevin Patteson, Executive Administrator  
Les Trobman, General Counsel  
Jeff Walker, Deputy Executive Administrator

**FROM:** Jessica Zuba, Director, Regional Water Planning & Development  
Lee Huntoon, Team Manager, Panhandle/West Region  
Barbara Watson, Staff Attorney

**DATE:** February 27, 2015

**SUBJECT:** City of Ballinger Project No. 62607 Alternative Water Source Request  
for Extension of Commitment

**ACTION REQUESTED**

Consider approving by resolution, a request from the City of Ballinger (Runnels County) to amend TWDB Resolution 14-27, by extending the commitment period to finance water system improvements through the Drinking Water State Revolving Fund.

**BACKGROUND**

The project as approved by the Texas Water Development Board (TWDB) involved the investigation of several alternatives, including the development of groundwater supply, purchase of surface water rights in Lake Coleman, the purchase of water from the City of Abilene, and possible reuse of the wastewater effluent. The City of Ballinger’s (City) consultants are continuing to evaluate options as the development of groundwater is proving to be unlikely.

**KEY ISSUES**

In November of 2014, the City became aware of possible water rights available in Lake Fort Phantom. The City is requesting an 18-month extension of time to close the loan in order to perform their due diligence in verifying the viability of this alternative.

The City’s 18-month request is based on several factors:

- **Water Plan Consistency:** The proposed purchase of water from Lake Fort Phantom is not a strategy in the 2012 Water Plan. The project would require waivers from Regions F and G Water Plans as well as the State Water Plan. Both regions have been notified. The estimated time to complete planning is by March 31, 2016, design by March 31, 2017, and construction by September 30, 2018.

- Regionalization: The City is in discussion with other communities in the area who have not been able to develop a sustainable alternative water supply in an effort to explore possible partnering opportunities.

**RECOMMENDATION**

One year has passed on the original commitment which was for planning, design, and construction. Due to the uncertainty of the project development, Staff recommends a 12-month extension of this commitment rather than the 18-month extension requested by the City.

Staff recommends amending TWDB Resolution 14-27 to extend the commitment to April 30, 2016.

This recommendation has been reviewed by legal counsel and is in compliance with applicable statutes and Board rules.

Attachments: 1. Resolution (15- )  
2. Resolution (14-27)  
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 14-27  
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE \$7,395,000  
CITY OF BALLINGER, TEXAS TAX AND WATERWORKS AND SEWER SYSTEM  
SURPLUS REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED TAXABLE SERIES 2015  
AND  
\$3,100,004 IN LOAN FORGIVENESS

(15- )

WHEREAS, at its April 17, 2014 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 14-27, made a commitment to provide financial assistance in the amount of \$10,495,004 to City of Ballinger (City) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB's purchase of \$7,395,000 Tax and Waterworks and Sewer System Surplus Revenue Certificates Of Obligation, Proposed Series 2015, and \$3,100,004 in loan forgiveness, for Project No. 62607; and

WHEREAS, pursuant to TWDB Resolution No. 14-27, the commitment period will expire April 30, 2015; and

WHEREAS, the City has submitted a request to extend the TWDB's commitment for an additional eighteen (18) months to provide the City additional time to explore and negotiate feasible water supply alternatives, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, in light of the ongoing commitment period as well as the uncertainty of the project development, the TWDB hereby finds that granting an extension of twelve (12) months is in the public interest.

NOW THEREFORE, based on these considerations and findings, the TWDB resolves as follows:

1. the commitment of the TWDB to provide financial assistance in the amount of \$10,495,004, as authorized in TWDB Resolution No. 14-27, is amended to extend the commitment to April 30, 2016; and
2. all other terms and conditions of TWDB Resolution No. 14-27 shall remain in full force and effect.

APPROVED and ordered of record this the 10<sup>th</sup> day of April, 2015.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Carlos Rubinstein, Chairman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO  
CITY OF BALLINGER  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$7,395,000 CITY OF BALLINGER, TEXAS, TAX AND WATERWORKS AND SEWER  
SYSTEM SURPLUS REVENUE CERTIFICATES OF OBLIGATION, PROPOSED  
TAXABLE SERIES 2014  
AND  
\$3,100,004 IN LOAN FORGIVENESS

(14-27)

WHEREAS, the City of Ballinger, located in Runnels County, Texas (City) has filed an application for financial assistance in the amount of \$10,495,004 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design and construction of certain water system improvements identified as Project No. 62607; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$7,395,000 City of Ballinger, Texas, Tax and Waterworks and Sewer System Surplus Revenue Certificates of Obligation, Proposed Taxable Series 2014 (together with all authorizing documents (Obligations)) and \$3,100,004 in loan forgiveness, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of taxes and surplus system revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the groundwater supply the project will develop is not a current or future source of supply for the City in the 2011 Region F Regional Water Plan or the 2012 State Water Plan; and

WHEREAS, the City is requesting a waiver of the requirement that the project be addressed in a manner that is consistent with the state and regional water plans because the groundwater to be developed by the City will be used to supplement or replace insufficient surface water; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;

3. that the City has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules;
4. that the needs to be addressed by the project and the support of regional water planning Region F for the project, warrant a waiver from the consistency requirement in Texas Water Code § 16.053(j);
5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the needs to be addressed by the project and the support of Regional Water Planning Region F for the project warrant a waiver of the requirement that the TWDB determine that the project is consistent with the State Water Plan and the approved Region F Regional Water Plan;
7. that the City meets the definition of Disadvantaged Community in 31 TAC § 371.1(24) and is therefore eligible for subsidy through the DWSRF; and
8. that the project is an Emergency Relief Project under 31 TAC §§ 371.40(7) and 371.51.

NOW, THEREFORE, based on these findings, the TWDB resolves as follows:

1. The TWDB hereby waives the requirement that it determine that the needs to be addressed by the project will be addressed in a manner that is consistent with the State Water Plan and with the approved regional water plan that includes the area benefiting from the proposed project, as allowed under Texas Water Code § 16.053(k).
2. A commitment is made by the TWDB to the City of Ballinger for financial assistance in the amount of \$10,495,004 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$7,395,000 City of Ballinger, Texas, Tax and Waterworks and Sewer System Surplus Revenue Certificates of Obligation, Proposed Taxable Series 2014 (together with all authorizing documents (Obligations)) and \$3,100,004 in loan forgiveness.
3. This commitment will expire on April 30, 2015.

Such commitment is conditioned as follows:

Standard Conditions

1. this commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand;

2. this commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 371;
4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and on any date beginning on or after the first interest payment date which is 10 years from the dated date of the Obligations, at a redemption price of par, together with accrued interest to the date fixed for redemption;
5. the City, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the City's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring the City to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
7. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
9. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds

Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;

10. loan proceeds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations shall include an environmental indemnification provision wherein the City agrees to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action or damages to the person or property of third parties arising from the sampling, analysis, transport, storage, treatment and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
11. prior to closing, the City shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
12. prior to closing, and not previously provided with the application, the City shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel contracts, for the project that are satisfactory to the Executive Administrator. Fees to be reimbursed under the contracts must be reasonable in relation to the services performed under the contract, and acceptable to the Executive Administrator;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City shall execute an escrow or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
14. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
15. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;

#### State Revolving Fund Conditions

16. the City shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
17. the Obligations must include a provision stating that all laborers and mechanics employed by contractors and subcontractors for projects shall be paid wages at rates not less than those prevailing on projects of a similar character in the locality in accordance with the Davis-Bacon Act, and the U.S. Department of Labor's implementing regulations. The

City, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon. All contracts and subcontracts for the construction of the project carried out in whole or in part with financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;

18. the Obligations must include a provision stating that the City shall provide the TWDB with all information required to be reported in accordance with the Federal Funding Accountability and Transparency Act of 2006, Pub. L. 109-282, as amended by Pub. L. 110-252. The City shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award Management (SAM), and maintain current registration at all times during which the Obligations are outstanding;
19. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and also shall provide that the City will adhere to the approved project schedule;

#### Drinking Water State Revolving Fund Conditions

20. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
21. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;
22. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City must provide documentation that it has met all applicable state procurement requirements as well as all federal procurement requirements under the Disadvantaged Business Enterprises program;

#### Pledge Conditions for the Loan

23. the Obligations must contain a provision that provides as follows:
  - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
  - b. if surplus revenues are based upon budgeted amounts:

- i. the Obligations must include a requirement that the City transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;
- ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
- iii. the Obligations must include a requirement that the City shall at all times maintain and collect sufficient rates and charges in conjunction with any other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than 1.10 times debt service requirements of all outstanding Obligations of the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of such Obligations, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements.

PROVIDED, however, the commitment is subject to the following special conditions:

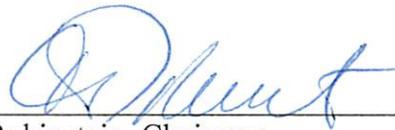
Special Conditions:

24. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC Chapter 371;
25. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

26. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;
27. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the City has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction;
28. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the project financed by the TWDB will provide; and
29. prior to the release of funds, the City shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule.

APPROVED and ordered of record this 17<sup>th</sup> day of April, 2014.

TEXAS WATER DEVELOPMENT BOARD



\_\_\_\_\_  
Carlos Rubinstein, Chairman

DATE SIGNED: 4/17/2014

ATTEST:

  
  
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Kevin Patteson  
Executive Administrator