

Texas Water Development Board

AFFIRMATION OF COMMITMENT

BOARD DATE: June 16, 2015
LOAN RECIPIENT: Windthorst Water Supply Corporation (62675)
ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 15-023 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Emergency Interconnect Project

Funding Elements: Planning Acquisition Design Construction

Benefits: Recent drought conditions have caused the elevation of the Corporation's Lake Arrowhead water source to fall to levels that cannot adequately serve local residents via existing infrastructure. The project will enable the Corporation to deliver adequate water capacity to the existing service population.

Key Issues: None.

Environmental Determination Type: Emergency Memo to File

Date Issued: April 24, 2015

Project Elements Covered:

1. Upgrade the City of Scotland's existing high-service pump station to enable delivery of adequate water supply to the Corporation.
2. Install approximately 36,960 linear feet of transmission line from the City of Scotland to the Corporation's facilities.

Mitigative Measures:

1. Standard emergency condition for the discovery of cultural resources; and,
2. Standard emergency condition for the discovery of threatened and endangered species.

Environmental Finding includes all project components? Yes No

Additional review required for other project components? Yes No

Previous Findings issued? Yes No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
LF1000421	Drinking Water State Revolving Fund	\$500,000

Attachment: Resolution No. (15-)
Resolution No. (15-023)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 15-023 AND LOAN COMMITMENT
TO THE WINDTHORST WATER SUPPLY CORPORATION

(15-)

WHEREAS, at its March 26, 2015 meeting, the Texas Water Development Board (TWDB), by Resolution No. 15-023, made a commitment to provide financial assistance in the amount of \$500,000 to Windthorst Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62675 (Project); and

WHEREAS, pursuant to TWDB Resolution No. 15-023, the TWDB's commitment to the Corporation included the release of funds through the pre-design commitment option after receiving a favorable recommendation from its Executive Administrator that there appeared to be no significant environmental impacts anticipated from the Project, based on preliminary environmental data provided by the Corporation; and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) Chapter 371, Subchapter E, funds for the design of the Project may not be released until an environmental review has been completed; and

WHEREAS, the Executive Administrator has informed the TWDB of the issuance of an emergency environmental finding memorandum for the Project on April 27, 2015 such finding being subject to the following conditions including the standard emergency discovery conditions for threatened and endangered species and cultural resources in Project contract documents.

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

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitments made to the Corporation in TWDB Resolution No. 15-023; and
2. the TWDB approves the release of funds for design and construction from the Drinking Water State Revolving Fund loans to the Corporation for proposed improvements to the Corporation's water supply system.

PROVIDED, however, such commitments and TWDB resolution are further conditioned as follows:

1. the Corporation must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources as more fully specified in the final environmental finding of the Executive Administrator.

2. All other terms and conditions of TWDB Resolution 15-023 shall remain in full force and effect.

APPROVED and ordered of record this 16th day of June, 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 WINDTHORST WATER SUPPLY CORPORATION
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH A LOAN IN THE AMOUNT OF \$500,000
WITH 100% LOAN FORGIVENESS

(15-023)

WHEREAS, the Windthorst Water Supply Corporation (Corporation) has filed an application for financial assistance in the amount of \$500,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the design and construction of certain water system improvements identified as Project No. 62675; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$500,000 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the Corporation for the loan and no taxes or revenues are required to be pledged by the Corporation;
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 Corporation is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less;
4. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j);
5. that the project is an Emergency Relief Project under 31 TAC §§ 371.40(7) and 371.51; and
6. that the project is considered an Urgent Need Project under the current Intended Use Plan, and is therefore eligible for a subsidy through the DWSRF.

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

A commitment is made by the TWDB to the Windthorst Water Supply Corporation for financial assistance in the amount of \$500,000 from the Drinking Water State Revolving Fund with 100% of the loan forgiven. This commitment will expire on March 31, 2016.

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 Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 371;
3. the Loan Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Loan Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds are public funds and, as such, the Loan Forgiveness Agreement 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;
5. loan proceeds shall not be used by the Corporation when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Loan Forgiveness Agreement shall include an environmental indemnification provision wherein the Corporation 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 Corporation, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
6. prior to closing, and if not previously provided with the application, the Corporation 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, reflected in the contract, and acceptable to the Executive Administrator;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Corporation 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;
8. the Executive Administrator may require that the Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

State Revolving Fund Conditions

9. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
10. the Loan Forgiveness Agreement 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 Corporation, 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;
11. the Loan Forgiveness Agreement must include a provision stating that the Corporation 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 Corporation 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 the term of the Loan Forgiveness Agreement;
12. the Loan Forgiveness Agreement 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 Corporation will adhere to the approved project schedule;
13. the Loan Forgiveness Agreement must contain a covenant that the Corporation will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

14. 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 Corporation has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Loan Forgiveness Agreement;
15. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Corporation 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;

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

Special Conditions:

1. the Corporation must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;
2. the Loan Forgiveness Agreement must include a provision requiring that, prior to any action by the Corporation to convey its obligations held by the TWDB to another entity, the conveyance and the assumption of the Obligations must be approved by the TWDB;
3. prior to closing, the Corporation shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
4. the Loan Forgiveness Agreement must include a provision stating that the Corporation shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and
5. prior to the release of design and construction funds, the Corporation shall complete the consultations required by the Endangered Species Act and the National Historic Preservation Act.

APPROVED and ordered of record this 26th day of March, 2015.

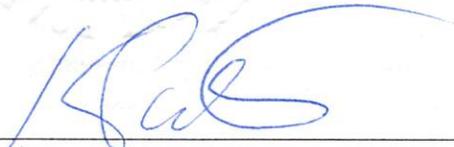
TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

DATE SIGNED: 3/26/15

ATTEST:



Kevin Patteson
Executive Administrator