

**AFFIRMATION OF COMMITMENT**

**BOARD DATE:** June 16, 2015  
**LOAN RECIPIENT:** City of Caddo Mills (73604)  
**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 11-71 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: FM 36 & FM 1903 Sewer Lines

Funding Elements:  Planning  Acquisition  Design  Construction

Benefits: The proposed project will solve environmental and potential health issues associated with faulty septic systems in the FM 1565, FM 1903, and FM 36 service areas. The City intends to provide sewer service to residential and business communities in this area. The soils in this area are not well suited for use with septic systems due to their relatively large absorption and drainage requirements, and the implementation of this project and the subsequent elimination of a number of existing septic systems will significantly reduce the non-point pollution discharges in these service areas.

Key Issues: None

Environmental Determination Type: Finding of No Significant Impact

Date Issued: May 6, 2015

- Project Elements Covered:
1. The FM 1565 alignment consists of approximately 23,000 linear feet (lf) of new sanitary sewer and 2 lift stations.
  2. The FM 1903 alignment consists of approximately 5,975 lf of new sanitary sewer and 2 lift stations.
  3. The FM 36 alignment consists of approximately 6,700 lf of new sanitary sewer and a new lift station.

**Our Mission : Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :

Carlos Rubinstein, Chairman | Bech Bruun, Member | Kathleen Jackson, Member  
 Kevin Patteson, Executive Administrator

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- Mitigative Measures:
1. Adherence to the terms and conditions of a U.S. Army Corps of Engineers Nationwide Permit 12 for Utility Line Activities;
  2. Standard emergency condition for the discovery of cultural resources; and,
  3. 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
L110073	Clean Water State Revolving Fund - EQ	\$4,430,000

- Attachments:
1. Resolution No. (15- )
  2. Resolution No. (11-71)

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 11-71 AND LOAN COMMITMENT  
TO THE CITY OF CADDO MILLS

(15- )

WHEREAS, at its September 22, 2011 meeting, the Texas Water Development Board (TWDB), by Resolution No. 11-71, made a commitment to provide financial assistance in the amount of \$4,430,000 to the City of Caddo Mills, Texas, (City), from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 73604 (Project); and

WHEREAS, pursuant to TWDB Resolution No. 11-71, the TWDB's commitment to the City 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 City; and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) Chapter 375, 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 a Finding of No Significant Impact (FNSI) for the Project on May 6, 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 City in TWDB Resolution No. 11-71; and
2. the TWDB approves the release of funds for design and construction for the project elements covered in the FNSI from the Clean Water State Revolving Fund loans to the City for proposed improvements to the City's wastewater treatment system.

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

1. the City 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. the City must adhere to the terms and conditions of U.S. Army Corps of Engineers Nationwide Permit 12 for utility line activities; and

3. all other terms and conditions in TWDB Resolution No. 11-71 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 FROM THE CLEAN WATER  
STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$4,430,000 CITY OF CADDO MILLS, TEXAS COMBINATION TAX AND SURPLUS REVENUE  
CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2011

(11-71)

WHEREAS, the City of Caddo Mills, located in Hunt County, Texas (the "City") has filed an application for financial assistance in the amount of \$4,430,000 from the Clean Water State Revolving Fund ("CWSRF") to finance certain wastewater system improvements including, but not necessarily limited to, the extension of wastewater lines into unserved areas identified as Project ID No. 73604; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "TWDB") through the TWDB's proposed purchase of \$4,430,000 City of Caddo Mills, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2011, (the "Obligations"), all as is more specifically set forth in the application and in recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, in accordance with §15.607, Water Code, the TWDB hereby finds:

1. that in its opinion the taxes and revenues pledged by the City will be sufficient to meet all the Obligations assumed by the City;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 *et seq.* (1972), as amended, as well as state law;
3. that the City has considered cost-effective, innovative, and nonconventional methods of treatment;
4. that the City has submitted 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 the TWDB's rules.

NOW THEREFORE, based on these considerations and findings, the Texas Water Development resolves as follows:

A commitment is made by the TWDB to the City of Caddo Mills for financial assistance in the amount of \$4,430,000 from the Clean Water State Revolving Fund, to be evidenced by the TWDB's proposed purchase of \$4,430,000 City of Caddo Mills, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2011. This commitment will expire on September 30, 2012.

Such commitment is conditioned as follows:

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 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 the rules and regulations of the TWDB;
4. the City's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the City when rendering this opinion;
5. the City's bond counsel must also state in the written opinion that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
6. the ordinance/resolution authorizing the issuance of these Obligations, (hereinafter referred to as the "*Authorizing Document*"), must include a provision prohibiting the City from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds";
7. the Authorizing Document must include a provision requiring the City to comply with the provisions of §148 of the Internal Revenue Code of 1986 (relating to arbitrage);
8. the Authorizing Document must include a provision requiring the City to make any required rebate to the United States of arbitrage earnings;
9. the Authorizing Document must include a provision prohibiting the City from taking any action which would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
10. the Authorizing Document must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" Obligations within the meaning of §149(b) of the Internal Revenue Code;
11. the bond transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
12. the bond transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form

8038 must be provided to the Executive Administrator of the TWDB prior to the release of funds;

13. the Authorizing Document 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;
14. 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, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission ("SEC") 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 owner 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;
15. if there are existing Obligations of the City outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the TWDB's loan shall be at least on a parity with lien or liens securing such outstanding debt;
16. the Authorizing Document must contain a provision requiring the City to levy a tax and/or to maintain and collect sufficient rates and charges to produce net system revenues in an amount necessary to meet the debt service requirements of all outstanding revenue bonds and to maintain the funds established and required by this ordinance;
17. the Authorizing Document must include a provision requiring the City to use any surplus proceeds from the Obligations 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 capitalized interest or principal on the obligations owned by the Board; or (3) eligible project costs as authorized by the Executive Administrator;
18. 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;
19. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant to TWDB rules;
20. prior to closing, and if not previously provided with the application, the City shall submit an executed engineering contract for design and construction, an executed financial advisor contract, and an executed bond counsel contract in a form and substance that are satisfactory to the TWDB's Executive Administrator;

21. 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 recipient, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon;
22. fees to be reimbursed under any consulting contract must be reasonable to the services performed and must be reflected in a contract acceptable to the Executive Administrator;
23. if a bond insurance policy or a surety policy in lieu of a cash reserve are utilized:
  - (a) thirty (30) days before closing, the City shall submit a draft of the policy to the TWDB's Executive Administrator for a determination on whether the policy provides appropriate security in accordance with TWDB policies;
  - (b) prior to closing, the City shall provide the executed underlying documents of the policy (e.g; commitment letter, specimen policy) in a form and substance that is satisfactory to the TWDB's Executive Administrator;
  - (c) prior to closing, the Attorney General of the State of Texas must have considered the use of said policy as a part of its approval of the proposed bond issue; and
  - (d) after loan closing, the City shall notify the Executive Administrator no less than 30 days prior to converting from a cash reserve fund to a surety policy. Such a conversion may only be made if the proposed insurer or surety meets the financial guarantees established in 31 TAC §375.19 and has satisfied the above requirements;
24. loan proceeds are public funds and, as such, these proceeds shall be held in escrow or in trust at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Chapter 2256, Government Code, (the "PFI"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "PFC");
25. prior to closing, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed form to the TWDB when any portion of loan proceeds are to be held in escrow or in trust;
26. subject to the availability of funds, the City's debt structure or the timing of its funding needs, the TWDB's Executive Administrator may request that the City execute a separate financing agreement in a form and substance acceptable to the TWDB;
27. 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 Authorizing Document 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;

28. the City shall be required to submit outlay reports with sufficient supporting documentation (e.g; invoices, receipts) on a quarterly basis. The TWDB shall retain the right to request project progress reports and outlay reports monthly as the project proceeds through each project phase;
29. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution; and
30. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect.

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

31. the loan is approved for funding under the TWDB's pre-design funding option, as specified in TWDB Rule 31 TAC §375.14, and initial and future releases of funds are subject to all rules of the TWDB relating to such funding option;
32. the Authorizing Document 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 Authorizing Document 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 Authorizing Document 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 Authorizing Document 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;

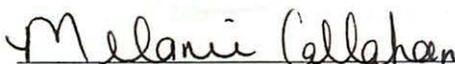
- 33. prior to closing, the City must adopt and implement the water conservation program approved by the TWDB; and
- 34. prior to the release of funds, the City shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that 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, the 22nd day of September, 2011.

TEXAS WATER DEVELOPMENT BOARD

  
Edward G. Vaughan, Chairman

ATTEST:

  
  
Melanie Callahan  
Interim Executive Administrator