

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** July 23, 2015

**LOAN RECIPIENT:** Greater Texoma Utility Authority, on behalf of the City of Sherman (62648)

**ACTION REQUESTED:** Affirm by resolution the commitments made in TWDB Resolution Number 14-105, with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: City of Sherman Water Treatment Plant Expansion Project

Funding Elements:  Planning  Acquisition  Design  Construction

Benefits: The proposed project will address capacity limitations and needed treatment improvements in the City of Sherman’s existing water system, which would restrict its ability to meet future demand.

Key Issues: None

Environmental Determination Type: Finding of No Significant Impact

Date Issued: June 24, 2015

Project Elements Covered:

1. Expanding the capacity of the Sherman Surface Water Treatment Plant from 10 million gallons per day (mgd) to 20 mgd;
2. Upgrading the treatment method by adding microfiltration or ultrafiltration pretreatment and reverse osmosis, and phasing out the current Electrodialysis Reversal system;
3. Installing approximately 4 miles of 14-inch diameter piping for brine disposal.

Mitigative Measures:

1. The Greater Texoma Utility Authority (GTUA) will adhere to the terms and conditions of Nationwide Permit 12 for Utility Line Activities, which is scheduled to expire on March 18, 2017, and to the applicable Storm Water Pollution Prevention Plan;
2. The GTUA acknowledges that it has the responsibility of the project proponent to ensure compliance with state and federal laws

**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 :

Bech Bruun, Chairman | Carlos Rubinstein, Member | Kathleen Jackson, Member

Kevin Patteson, Executive Administrator

and obtain required permits regarding protected species and their habitats, and will implement all recommendations of the Texas Parks and Wildlife Department to the extent possible by including these recommendations and the response from the GTUA in construction contract documents;

3. Prior to construction in floodplains, the GTUA will obtain a permit from the Grayson County Floodplain Administrator;
4. Standard emergency condition for discovery of cultural resources;
5. Standard emergency condition for discovery of threatened or 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
L1000344	Drinking Water State Revolving Fund -- EQ	\$2,525,000

- Attachment:
1. Resolution No. 15-
  2. Resolution No. 14-105

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 14-105 AND LOAN COMMITMENT  
TO THE GREATER TEXOMA UTILITY AUTHORITY

(15- )

WHEREAS, at its November 20, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-105, made a commitment to provide financial assistance in the amount of \$2,525,000 to the Greater Texoma Utility Authority on behalf of the City of Sherman (Authority) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62648 (Project); and

WHEREAS, pursuant to TWDB Resolution No. 14-105, and based on preliminary environmental data provided by the Authority, the TWDB's commitment to the Authority included the release of funds for planning, acquisition and design after receiving a favorable recommendation from its Executive Administrator that there appeared to be no significant environmental impacts anticipated from the Project; 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 a Finding of No Significant Impact (FNSI) for the Project on June 3, 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 Authority in TWDB Resolution No. 14-105; and
2. the TWDB approves the release of funds for design from the Drinking Water State Revolving Fund loans to the Authority for proposed water system improvements.

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

1. the Authority 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; and

2. the Authority will adhere to the terms and conditions of Nationwide Permit 12 for Utility Line Activities, which is scheduled to expire on March 18, 2017, and to the applicable Storm Water Pollution Prevention Plan;
3. the Authority acknowledges that it has the responsibility of the project proponent to ensure compliance with state and federal laws and obtain required permits regarding protected species and their habitats, and will implement all recommendations of the Texas Parks and Wildlife Department to the extent possible by including these recommendations and the response from the Authority in construction contract documents;
4. prior to construction in floodplains, the Authority will obtain a permit from the Grayson County Floodplain Administrator; and
5. all other terms and conditions of TWDB Resolution 14-105 shall remain in full force and effect.

APPROVED and ordered of record this 23<sup>rd</sup> day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech K. Bruun, Chairman

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

ATTEST:

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

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$2,525,000 TO GREATER TEXOMA UTILITY AUTHORITY  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$2,525,000 GREATER TEXOMA UTILITY AUTHORITY CONTRACT REVENUE BONDS,  
PROPOSED SERIES 2015 (CITY OF SHERMAN PROJECT)

(14-105)

WHEREAS, the Greater Texoma Utility Authority on behalf of the City of Sherman, located in Grayson County, Texas (Authority) has filed an application for financial assistance in the amount of \$2,525,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, and design of certain water system improvements identified as Project No. 62648; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$2,525,000 Greater Texoma Utility Authority Contract Revenue Bonds, Proposed Series 2015 (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Authority has offered a pledge of contract revenues from the City of Sherman as sufficient security for the repayment of the Obligations; and

WHEREAS, the project is a recommended strategy in a regional water plan that would be approved but for the interregional conflict between the Regional Water Planning Regions C and D;

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Authority will be sufficient to meet all the Obligations assumed by the Authority, 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 Authority 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; and
4. that 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).

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

1. for the reasons stated above, the TWDB hereby waives the requirements of Texas Water Code § 16.053(j), pursuant to Texas Water Code § 16.053(k); and
2. a commitment is made by the TWDB to the Greater Texoma Utility Authority for financial assistance in the amount of \$2,515,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$2,515,000 Greater Texoma Utility Authority Contract Revenue Bonds, Proposed Series 2015. This commitment will expire on May 31, 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 Authority;
3. this commitment is contingent upon the Authority'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 Authority, 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 Authority'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 Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the Authority 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 Authority 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 Authority 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 Authority 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 Authority, 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 Authority 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 if not previously provided with the application, the Authority 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;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Authority 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 Authority 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;

#### Conditions Related To Tax-Exempt Status

16. the Authority'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 Authority when rendering this opinion;
17. the Authority's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;
18. the Obligations must include a provision prohibiting the Authority from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
19. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) which produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the loan (Source Series Bonds), other than Nonpurpose Investments acquired with:
  - a. proceeds of the TWDB's Source Series Bonds invested for a reasonable temporary period of up to three (3) years after the issue date of the Source Series Bonds until such proceeds are needed for the facilities to be financed;
  - b. amounts invested in a bona fide debt service fund, within the meaning of § 1.148-1(b) of the Regulations; and
  - c. amounts deposited in any reasonably required reserve or replacement fund to the extent such amounts do not exceed the least of maximum annual debt service on the Obligations, 125% of average annual debt service on the Obligations, or 10

percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

20. the Obligations must include a provision requiring the Authority take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the Authority will:
  - a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the Authority, provided that the Authority separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its Loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The Authority shall maintain a copy of such calculations for at least six years after the final Computation Date;
  - c. as additional consideration for the making of the Loan, and in order to induce the making of the Loan by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners thereof for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date;
  - d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if such error is made, to discover and promptly to correct such error within a reasonable amount of time thereafter, including payment to the United States of any interest and any penalty required by the Regulations;
21. the Obligations must include a provision prohibiting the Authority from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
22. the Obligations must provide that the Authority will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;

23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
24. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;
25. the Obligations must provide that neither the Authority nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the Authority by the TWDB;

#### State Revolving Fund Conditions

26. the Authority shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
27. 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 Authority, 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;
28. the Obligations must include a provision stating that the Authority 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 Authority 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;
29. 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 Authority will adhere to the approved project schedule;
30. The Obligations must contain a covenant that the Authority 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

31. prior to or at closing, the Authority shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
32. 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 Authority 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;
33. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Authority 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

34. if the Authority has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
35. upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
36. the Obligations must contain a provision requiring the Authority to maintain rates and charges sufficient to meet the debt service requirements on the outstanding debt Obligations that are being supported by the pledged contract revenues and will further require its customers to maintain rates and charges sufficient to pay all of their revenue obligations arising from the operation of the water and sewer system;
37. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;
38. prior to closing, the Authority must submit executed contracts between the Authority and the contracting parties regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of

this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Authority's debt service obligations and additional parity obligations;

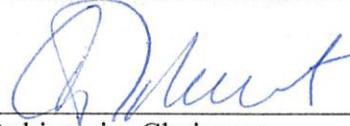
PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

39. the Authority shall not amend or revise the Water and Sewer Facilities Contract with the City of Sherman, which is the revenue source for the pledge, if the revision or amendment affects the financial condition of the Authority or its ability to repay the loan described in this Commitment, without receiving the written approval of the Executive Administrator;
40. the Authority 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;
41. the Obligations must include a provision requiring that, prior to any action by the Authority 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; and
42. 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 Authority 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.

APPROVED and ordered of record this 20<sup>th</sup> day of November, 2014.

TEXAS WATER DEVELOPMENT BOARD



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

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

11-20-14

ATTEST:

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