

AFFIRMATION OF COMMITMENT

BOARD DATE: August 12, 2015
LOAN RECIPIENT: Brazosport Water Authority (62643)
ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 14-66 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Water Treatment Plant Improvements Project – Administration Building
Funding Elements: Planning Acquisition Design Construction

Benefits: The proposed project will allow the Authority to proceed with construction of a new administration building on the water treatment plant site in order to address safety concerns regarding mold in the building that is currently being used. The remainder of the proposed improvements require additional environmental review including consultation with regulatory agencies because those project components require construction in undeveloped portions of the property.

Key Issues: None.

Environmental Determination Type: Categorical Exclusion

Date Issued: May 28, 2015

Project Elements Covered: Construct an administration building on the water treatment plant site.

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.

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

Affirmation of Commitment

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- 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
L1000326	Drinking Water State Revolving Fund	\$15,500,000

- Attachment: 1. Resolution No. 15-
2. Resolution No. 14-66

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 14-66 AND LOAN COMMITMENT
TO THE BRAZOSPORT WATER AUTHORITY

(15-)

WHEREAS, at its August 13, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-66, made a commitment to provide financial assistance in the amount of \$15,500,000 to Brazosport Water Authority (Authority) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62643 (Project); and

WHEREAS, pursuant to TWDB Resolution No. 14-66, and based on preliminary environmental data provided by the Authority, the TWDB's commitment to the Authority included the release of funds for design and construction 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 and construction 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 Categorical Exclusion for a portion of the Project on May 28, 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 for a portion of the Project and affirms the commitments made to the Authority in TWDB Resolution No. 14-66; and
2. the TWDB approves the release of funds for design and construction from the Drinking Water State Revolving Fund loans to the Authority for certain proposed improvements to the Authority's water supply system.

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. all other terms and conditions of TWDB Resolution 14-66 shall remain in full force and effect.

APPROVED and ordered of record this 12th day of August, 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
\$15,500,000 TO BRAZOSPORT WATER AUTHORITY
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$15,500,000 BRAZOSPORT WATER AUTHORITY WATER SUPPLY REVENUE BONDS,
PROPOSED SERIES 2014

(14-66)

WHEREAS, the Brazosport Water Authority, located in Brazoria County, Texas (Authority) has filed an application for financial assistance in the amount of \$15,500,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the design and construction of certain water system improvements identified as Project No. 62643; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$15,500,000 Brazosport Water Authority Water Supply Revenue Bonds, Proposed Series 2014 (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 a subordinate lien on its net system revenues as sufficient security for the repayment of the Obligations; and

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;
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);

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

A commitment is made by the TWDB to the Brazosport Water Authority for financial assistance in the amount of \$15,500,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$15,500,000 Brazosport Water Authority Water Supply Revenue Bonds, Proposed Series 2014. This commitment will expire on August 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. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
35. 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;
36. the Obligations must contain a provision providing that for either the preceding fiscal year or a 12 consecutive calendar month period ending no more than 90 days prior to adoption of the resolution authorizing such Additional Parity Bonds, Net Revenues must be equal to 105% of the average annual principal and interest requirements on all Outstanding Senior Lien Bonds and all Regional Revenue Bonds that will be outstanding after the issuance of the series of Additional Parity Bonds then proposed to be issued, as certified by an independent certified public accountant or registered professional engineer of the State of Texas. For purposes of such calculation, the Authority may take into account and treat as if received any Revenues to be paid to the Authority during the first 12 months after the commencement of such payments under any new or revised Contract then in effect but, pursuant to the terms of which, payments have yet to commence;

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

Special Conditions:

37. 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;

38. 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;
39. 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;
40. the Obligations must contain a provision that the Obligations will be secured by a first lien on pledged revenues after any outstanding senior lien bonds have been retired or redeemed and that the Authority will not issue any additional bonds, notes, or other obligations or create or issue evidences of indebtedness for any purpose possessing a lien on the net revenues superior to that possessed by the Obligations; and
41. 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.

APPROVED and ordered of record this 13th day of August, 2014.

TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

DATE SIGNED: _____

8-18-14

ATTEST:



Kevin Patteson
Executive Administrator