

TO: Board Members

THROUGH: Kevin Patteson, Executive Administrator
Les Trobman, General Counsel

FROM: Joe Reynolds, Assistant General Counsel

DATE: July 31, 2015

SUBJECT: An Amendment to Previously Adopted TWDB Resolution No. 15-085

ACTION REQUESTED

Amend by resolution previously adopted TWDB Resolution No. 15-085 to accurately reflect the amount of interest rate subsidy the Texas Water Development Board (TWDB) will be providing to the Palo Pinto County Municipal Water District No. 1 (District) in the TWDB's commitment to the District.

BACKGROUND

On July 23, 2015, The TWDB made a commitment to the District for financial assistance in the amount of \$17,100,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT). TWDB Resolution No. 15-085 includes in its recitals a reference to the financing structure for deferred loans. Underlying information exchanged during the application process, and the documents that accompanied the resolution, however, express intent to provide the financial assistance under the terms for low-interest loans. Therefore, TWDB Resolution No. 15-085 does not reflect the correct amount of interest rate subsidy and needs to be revised.

KEY ISSUES

Under Texas Water Code § 15.435(c), the Executive Administrator recommended to the Board providing the following terms and subsidies for SWIRFT loans:

interest rate subsidies on low-interest loans at the following levels: 35.5% for loans of a term of 20 years, 27% for loans of a term of 25 years, and 22% for loans of a term of 30 years; and

interest rate subsidies on deferred loans at the following levels: 15% for loans of a term of 20 years, and 0% for loans of a term of greater than 20 years.

The District initially applied for financial assistance based on a 30-year loan with a deferral of principal and interest. During the review of the application, the District decided to take a low-interest loan for a term of 30 years and not defer repayment. This decision changed its interest

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

Board Members

July 31, 2015

Page 2

rate subsidy from 0.0% to 22.0%. The documents provided to the Board in support of the July 23rd agenda item reflected this change; but the change was not captured in the resolution. It is therefore necessary to amend TWDB Resolution No. 15-085 in order to accurately reflect the amount of interest rate subsidy on the financial assistance committed by the TWDB to the District from the SWIRFT.

RECOMMENDATION

The Executive Administrator recommends the amendment by resolution of TWDB Resolution No 15-085 as described in this memorandum.

Attachment(s):

1. TWDB Resolution No 15-
2. TWDB Resolution No 15-085

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 15-085
TO PROVIDE FINANCIAL ASSISTANCE TO THE PALO PINTO COUNTY MUNICIPAL
WATER DISTRICT NO. 1, TEXAS
IN THE AMOUNT OF \$17,100,000

(15-)

WHEREAS, at its July 23, 2015 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 15-085, made a commitment to the Palo Pinto County Municipal Water District No. 1 (District) for financial assistance in the amount of \$17,100,000 from the State Water Implementation Revenue Fund for Texas, through the purchase of \$9,915,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds, Proposed Series 2015A and \$7,185,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds Proposed Taxable Series 2015B, all as is more specifically set forth in the TWDB's Resolution No. 15-085 and accompanying documentation, to which documents express reference is made; and

WHEREAS, the District initially applied for financial assistance with a deferral of principal and interest as provided in the financing structure for the SWIRFT under Texas Water Code § 15.435(c); and

WHEREAS, the District later requested, and documentation that accompanied TWDB Resolution 15-085 reflected, a 30-year low-interest loan, which provided an interest rate subsidy of 22.0%; and

WHEREAS, the fourth recital in Resolution No. 15-085 referred to an interest rate subsidy for a deferred loan of 0.0% for a loan term of greater than 20 years; and

WHEREAS, an amendment to TWDB Resolution No. 15-085 is therefore necessary to reflect the Board's commitment to providing the financial assistance in TWDB Resolution No. 15-085 to the District with an interest rate subsidy of 22.0% for a loan term of 30 years; and

WHEREAS, the TWDB finds that the amendment to accurately reflect the amount of interest rate subsidy on this loan to the District is reasonable, is in the public interest, and will serve a public purpose; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law;

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

1. The commitment made through TWDB Resolution No. 15-085 to the Palo Pinto County Municipal Water District No. 1 for financial assistance in the amount of \$17,100,000 from the State Water Implementation Revenue Fund for Texas is made with a low-interest rate subsidy of 22.0%. This commitment will expire on December 31, 2015.

2. All other terms and conditions of TWDB Resolution No. 15-085 shall remain in full force and effect.

APPROVED and ordered of record this, the 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
 \$17,100,000 TO PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1
 FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
 THROUGH THE PROPOSED PURCHASE OF
 \$9,915,000 PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1
 REVENUE BONDS, PROPOSED SERIES 2015A AND
 \$7,185,000 PALO PINTO COUNTY MUNICIPAL WATER DISTRICT NO. 1
 REVENUE BONDS PROPOSED TAXABLE SERIES 2015B**

(15-085)

WHEREAS, the Palo Pinto County Municipal Water District No. 1, located in Erath, Hood, Palo Pinto, and Parker Counties, Texas, (District) has filed an application for financial assistance in the amount of \$17,100,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), to finance the acquisition and design of certain water supply project(s) identified as Project No. 51020; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$9,915,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds, Proposed Series 2015A and \$7,185,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds Proposed Taxable Series 2015B, together with all authorizing documents (Obligations), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the District has offered a pledge of a first lien on the pledged revenues of the system as sufficient security for the repayment of the Obligations; and

WHEREAS, interest rate subsidies are available to the District at the following levels: 15% for loans of a term of 20 years, and 0% for loans of a term of greater than 20 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the District, pursuant to this Resolution; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that a water conservation plan, if required by Texas Water Code § 11.1271, has been submitted and implemented in accordance with 31 TAC § 363.1309(b)(1);
4. that the District satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);

5. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the District and filed with the TWDB in accordance with 31 TAC § 358.6; and
6. that the District has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to Palo Pinto County Municipal Water District No. 1 for financial assistance in the amount of \$17,100,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$9,915,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds, Proposed Series 2015A and \$7,185,000 Palo Pinto County Municipal Water District No. 1 Revenue Bonds Proposed Taxable Series 2015B. This commitment will expire on December 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 District;
3. this commitment is contingent upon the District's continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the District executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;
5. the District shall use a paying agent/registrar in accordance with 31 TAC Section 363.42(c)(2), and shall require the paying agent/registrar to provide a copy, to the TWDB and to the TWDB's designated Trustee, of all receipts documenting debt service payments;

The Following Conditions Must Be Included in the Obligations:

6. 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;
7. the Obligations must include a provision wherein the District, 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 District'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 District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
8. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) 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 (2) eligible costs for the project as authorized by the Executive Administrator;
9. 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;
10. 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;
11. loan proceeds shall not be used by the District 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 District 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, recycling and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the District, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

12. the Obligations must include a provision stating that the District shall report to the TWDB the amounts of project funds, if any, that were used to compensate historically underutilized businesses that worked on the project, in accordance with 31 TAC § 363.1312;
13. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC Section 363.42(c)(1);
14. the tax-exempt Obligations must include a provision prohibiting the District 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 amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
15. the tax-exempt 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;
16. the tax-exempt Obligations must include a provision requiring the District 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 District 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 District may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the District, provided that the District 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 District 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;
17. the tax-exempt Obligations must include a provision prohibiting the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 18. the tax-exempt Obligations must provide that the District will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 19. the tax-exempt Obligations must provide that neither the District 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 District by the TWDB;

Revenue Pledge

20. the Obligations must require the accumulation of a reserve fund of not less than the average annual debt service requirements for all the outstanding obligations to be accumulated within sixty-one (61) months;
21. if the District 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 Obligations must contain a provision providing that 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;
22. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if a certificate or opinion from a certified public accountant showing that the pledged revenues for either (a) the District's last completed fiscal year, or (b) a consecutive twelve-month calendar period ending not more than 90 days preceding the adoption of the resolution authorizing the issuance of additional bonds is adopted, are equal to at least 1.25 times the

average annual debt service of all parity obligations which will be outstanding after giving effect to the issuance of the additional bonds then being issued as certified by a certified public accountant, or the District has secured from a certified public accountant or professional engineer a certificate of opinion showing that the net revenues for a twelve-month calendar period, based on rates and charges for services and facilities afforded by the system that became effective at least sixty (60) days prior to the month in which the resolution authorizing the issuance of the additional bonds is adopted, are equal to at least 1.25 times the average annual debt service of all parity obligations which will be outstanding after giving effect to the issuance of the additional bonds being issued;

Conditions to Close or for Release of Funds:

23. prior to closing, and if not previously provided with the application, the District 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;
24. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the District shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
25. prior to release of funds for construction, the District must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the District has the legal authority necessary to complete the acquisitions;
26. prior to release of funds for acquisition, design or construction for specific project elements, the environmental review must be completed and a favorable environmental finding must have been issued;
27. prior to closing, the District's bond counsel must prepare a written opinion that states that the interest on the tax-exempt Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the District when rendering this opinion;
28. prior to closing, the District's bond counsel must prepare a written opinion that also states that the tax-exempt Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the District when rendering this opinion;
29. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District's reasonable expectations regarding the use, expenditure and investment of the proceeds of the tax-exempt Obligations;
30. 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; and

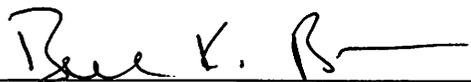
- 31. prior to closing, the District must submit executed contracts between the District and the contracting parties regarding the contract revenues pledged to the payment of the District's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions 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 District's debt service obligations and additional parity obligations.

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

- 1. the District 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; and
- 2. the Obligations must include a provision requiring that, prior to any action by the District 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.

APPROVED and ordered of record this, the 23rd day of July, 2015.

TEXAS WATER DEVELOPMENT BOARD



 Bech K. Bruun, Chairman

DATE SIGNED: 7-23-15

ATTEST:



 Kevin Patteson
 Executive Administrator