

TO: Board Members

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

FROM: Kaye Schultz, Assistant General Counsel

DATE: September 10, 2015

SUBJECT: Consider authorizing the Executive Administrator to expand the bond counsel fee cap pursuant to the applicable outside counsel contract

ACTION REQUESTED

Consider authorizing the Executive Administrator to expand the bond counsel fee cap pursuant to Outside Counsel Contract No. 1400011745 between the Texas Water Development Board (TWDB) and McCall, Parkhurst & Horton L.L.P.

BACKGROUND

The TWDB has retained McCall, Parkhurst & Horton, L.L.P. (Bond Counsel) to provide assistance as it pertains to new money bond issues for the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT). Bond Counsel has indicated that due to the complex issues relating to these start-up funds, there is a need to expand the fee cap under the terms of the outside counsel contract.

TWDB outside counsel contracts contain a provision establishing a fee cap of \$50,000 for a standard bond issuance. The Board may establish a higher fee cap for issuances that will involve additional complexity, such as refundings or new programs, at the time the bond issuance is authorized.

KEY ISSUES

The objective of the State Water Implementation Fund for Texas (SWIFT) and its companion fund, the State Water Implementation Revenue Fund for Texas (SWIRFT), passed in 2013, was to leverage the \$2 billion authorized for deposit into SWIFT to provide approximately \$27

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 Kathleen Jackson, Member
	:	Kevin Patteson, Executive Administrator

billion in financial assistance for state water plan projects over the next 50 years. This is an entirely new program unlike any other in the United States and presented unique and novel challenges in creation of a financing program enabling the issuance of SWIRFT bonds. Bond Counsel has provided legal counsel to the TWDB in this endeavor.

Bond Counsel's services have included (1) establishing legal and programmatic analyses and instruments that implement the enabling legislation and create the broad framework of the SWIFT program; (2) performing complex research and providing analysis regarding tax implications to ensure investments made in SWIFT are not constrained yet enable SWIFT to be leveraged in a manner that enables water plan projects to be funded into the future; and (3) preparing and negotiating complex and unique documents such as bond enhancement agreements and master trust and bond indentures that are unlike those used in any other TWDB program. The work products created will serve as templates for SWIFT and SWIRFT transactions into the future.

Bond Counsel's legal work relating to the issuance of SWIRFT bonds and the estimated fees to be incurred at the time of the delivery of the captioned bond issues exceeds the \$50,000 per bond transaction fee cap in the outside counsel contract. The provisions of the contract allow the Board to establish a higher fee cap for issuances that involve additional complexity, such as new programs.

RECOMMENDATION

Authorize the Executive Administrator to expand the bond counsel fee cap payable to McCall, Parkhurst, & Horton, L.L.P. to an amount not to exceed \$175,000, pursuant to the outside counsel contract with the TWDB for work performed pertaining to the SWIFT and SWIRFT programs and bond issuance.

CERTIFICATION

This recommendation has been reviewed by legal counsel and is within the Agency's legal authority.

Les Trobman, General Counsel