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## ADMINISTRATIVE FINDING

**TO:** File

**FROM:** Kevin Patteson, Executive Administrator

**DATE:** November 17, 2015

**SUBJECT:** Administrative Finding  
El Paso Water Utilities Public Service Board, El Paso County, Texas  
Land and Water Rights Acquisition Project  
State Water Implementation Revenue Fund for Texas, Project No. 51012  
(L15014, \$50,000,000)

The attached memorandum contains the results of the staff's review of the Land and Water Rights Acquisition Project proposed by the El Paso Water Utilities Public Service Board (EPWU). The memorandum is based in part on the staff's evaluation of a Phase I Environmental Site Assessment (ESA) of the C L Ranch, Hudspeth County, Texas, located approximately 75 miles east of the City of El Paso (City). The EPWU prepared and submitted the ESA on October 12, 2015. The Texas Water Development Board (TWDB) committed funds for this project on July 23, 2015, in the amount of \$50,000,000. The EPWU plans to close the loan on December 2, 2015.

The present administrative finding pertains to acquisition of approximately 25,408 acres of land on the C L Ranch, as well as associated rights to groundwater in the subjacent Bone Springs-Victorio Peak Aquifer. This project would address concerns regarding the City's long-term water supply. As the largest regional water provider in the Far West Texas Regional Water Planning Area, the EPWU serves residential, commercial, and institutional water customers throughout its service area, on a wholesale or retail basis, providing potable water to approximately 834,000 residents. By 2040, the service population is projected to rise to 1,263,000 residents, a 51% increase. The EPWU relies on a combination of surface water and groundwater sources to meet its present raw-water needs, but is attempting to secure additional supplies. The surface water is delivered to the EPWU by the Bureau of Reclamation through releases from the Elephant Butte Reservoir on the Rio Grande in New Mexico. Because of ongoing drought conditions in the region, the EPWU has received only a fraction of its allocated supply in recent years, declining to as little as 10% in 2013. The EPWU is, therefore, seeking a new, more reliable water source to ensure adequate supplies now and in the future. To address its demonstrated need, the EPWU intends to acquire the C L Ranch and associated water rights. Following acquisition, the EPWU would actively manage the property and aquifer to maintain an adequate source of readily treatable groundwater in the future.

A condition for release of funds for this project required the EPWU to submit an ESA of the proposed project area. An ESA is a standard, baseline review of conditions within a specific property, identifying known or potential hazards to the environment and public health and safety that may exist at the site and that may necessitate mitigation and/or monitoring by the property owner. In addition, the ESA may provide the owner and prospective buyer with a determination of liability for any environmental contamination. The review must be conducted in accordance with the requirements of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 United States Code § 9601), by “environmental professionals” as defined in the CERCLA statute.

On October 12, 2015, the EPWU submitted a report to the TWDB, presenting the results of its ESA of the C L Ranch property. The TWDB staff reviewed the ESA and determined that the report is well-prepared and accurate and consistent with the requirements of the CERCLA. The staff also determined that the proposed land and water rights acquisition project is consistent with the environmental review requirements of 31 Texas Administrative Code § 363.14 for state-funded projects. Based on these conclusions, I have determined that the EPWU fulfilled Condition 34 in TWDB Resolution Number 15-081 by submitting an ESA “in form and substance acceptable to the [TWDB’s] Executive Administrator.”

The assessment identified a number of facilities within the proposed project area that might affect the intended development of the site’s groundwater resources in conjunction with TWDB-funded projects. These facilities include: a small active gypsum mine; an above-ground storage tank containing diesel fuel used at the mine; flood-control structures and associated groundwater recharge wells; existing wells supplying water for irrigation and livestock; test wells and borings for exploration of oil, natural gas, sodium sulfate, and groundwater resources, and for a seismic survey; abandoned domestic wells; natural gas pipelines; a former illegal dumpsite (remediated); and a small building (“ceramic art studio”) that may contain asbestos insulation and/or lead-based paint. The preparer recommended plugging the abandoned domestic wells, an uncompleted irrigation well, and boreholes used for sodium sulfate exploration and a seismic survey (“shot hole”), and testing potentially hazardous materials at the ceramic art studio.

Based on the staff’s review as discussed in the attached Memorandum, I have determined that no significant adverse environmental impact should result from the proposed land and water rights acquisition. Should the EPWU seek additional TWDB funding for developing the land and water resources of Project No. 51012, additional environmental review requirements will apply.

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### EXECUTIVE ADMINISTRATOR'S FINDING

Based on the foregoing, I find:

1. that the Phase I Environmental Site Assessment submitted by the EPWU on October 12<sup>th</sup>, 2015, for the proposed project is acceptable in form and substance; and
2. that the project as proposed by the EPWU is environmentally sound, and that funds for acquisition of land and associated water rights should be released once other requirements are satisfied.

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Kevin Patteson  
Executive Administrator

Enclosure

## MEMORANDUM

**TO:** Kevin Patteson, Executive Administrator

**THROUGH:** Darrell Nichols, Assistant Executive Administrator  
Jeff Walker, Deputy Executive Administrator  
Jessica Zuba, Director, Regional Water Planning and Development  
Lee Huntoon, Manager, Team 1 (Panhandle/West, Regions A, E, F, O)

**FROM:** S. Christopher Caran, P.G., Environmental Reviewer, Team 1  
(Panhandle/West, Regions A, E, F, O)

**DATE:** November 17, 2015

**SUBJECT:** Administrative Finding  
El Paso Water Utilities Public Service Board, El Paso County, Texas  
Land and Water Rights Acquisition Project  
State Water Implementation Revenue Fund for Texas, Project No. 51012  
(L15014, \$50,000,000)

Pursuant to the environmental review requirements of 31 Texas Administrative Code (TAC) § 363.14 of the Texas Water Development Board (TWDB) rules, I have conducted a review of the Land and Water Rights Acquisition Project proposed by the El Paso Water Utilities Public Service Board (EPWU), El Paso County, Texas. This project would utilize acquisition funds from loan L15014 from the State Water Implementation Revenue Fund for Texas. The TWDB committed this loan on July 23, 2015, in the amount of \$50,000,000. The EPWU plans to close the loan on December 2, 2015. Conditions affecting the release of these funds were stipulated in TWDB Resolution Number 15-081, issued at the time of the loan commitment.

### Purpose and Need<sup>1</sup>

The purpose of the proposed project is to establish a new source of readily treatable groundwater with a capacity sufficient to address future demand. The EPWU serves residential, commercial, and institutional water customers throughout its service area, on a wholesale or retail basis, providing potable water to approximately 834,000 residents. By 2040, the service population is projected to rise to 1,263,000 residents, a 51% increase. To meet its current raw-water needs, the EPWU relies on a combination of surface water and groundwater supplies. The surface water is delivered to the EPWU by the Bureau of Reclamation through releases from the Elephant Butte Reservoir on the Rio Grande in New Mexico. Because of ongoing drought conditions in the region, the EPWU has received only a fraction of its allocated surface-water supply in recent years, declining to as little as 10% in 2013. A new, more reliable water source is needed to ensure an adequate supply now and in the future. After evaluating a number of

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<sup>1</sup> El Paso Water Utilities (October, 2015). *Phase I Environmental Site Assessment--C L Ranch, Dell City, Texas* (Prepared by LBG-Guyton Associates. Austin, Texas). Received by TWDB on October 12, 2015.

alternatives, the EPWU selected one of the water supply strategies included in the 2012 State Water Plan, as described below.

### Project Description

To address its demonstrated need for additional raw-water supplies, the EPWU proposes to acquire approximately 25,408 acres of land on the C L Ranch in Hudspeth County, Texas, located 75 miles east of the City of El Paso (City). In addition to the land, the EPWU would concurrently obtain rights to the associated groundwater in the subjacent Bone Springs-Victorio Peak Aquifer. Until the water is needed, the EPWU would manage the property and aquifer in order to ensure an adequate source of readily treatable groundwater in the future.

### Public Participation

The general public has participated in this project primarily through its elected representatives. On October 10, 2014, the El Paso City Council passed a resolution expressing support for the project. In addition, the EPWU provides progress reports at its regular board meetings. Documents pertaining to the proposed project are available for public inspection and comment upon request. The EPWU expects to issue notices and conduct public meetings as the project advances.

### Review of the Phase I Environmental Site Assessment by TWDB Staff

The TWDB committed loan L15014 for this project with a number of conditions detailed in Resolution Number 15-081, including the following: “prior to release of funds for acquisition, the (EPWU) shall submit a Phase I Environmental Site Assessment (ESA) of the proposed project area in form and substance acceptable to the (TWDB’s) Executive Administrator” (Condition 34). An ESA is a standard, baseline review of conditions within a specific property, identifying known or potential hazards to the environment and public health and safety that may exist at the site and that may necessitate mitigation and/or monitoring by the property owner. In addition, the ESA may provide the owner and prospective buyer with a determination of liability for any environmental contamination. The review must be conducted in accordance with the requirements of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA; 42 United States Code § 9601), by “environmental professionals” as defined in the CERCLA statute. The preparer must employ “good and customary practices” to make “all appropriate inquiries” related to the site assessment, including:

- 1) interviews with past and present owners, operators, and occupants;
- 2) reviews of historical sources of information;
- 3) reviews of federal, state, tribal, and local government records;
- 4) visual inspections of the facility and adjoining property;
- 5) collection and review of commonly known or reasonably ascertainable information

- regarding the property;
- 6) determination of the degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination;
  - 7) identification of environmental cleanup liens
  - 8) assessments of any specialized knowledge or experience of the prospective landowner (or grantee) regarding the property; and
  - 9) assessment of the relationship of the purchase price to the fair market value of the property if the property were not contaminated.

In accordance with TWDB Resolution Number 15-081, release of funds for acquisition of land and associated water rights, the EPWU agreed to complete and submit to the TWDB an ESA of the C L Ranch property. On October 12, 2015, the TWDB received a copy of the report resulting from that assessment. The TWDB staff reviewed the document and evaluated it for consistency with the federal CERCLA. The results of this review are summarized below.

- 1) The ESA was completed and submitted in compliance with the terms and conditions of TWDB Resolution Number 15-081, by which funds for land and water rights acquisition were committed.
- 2) The ESA was prepared by LBG-Guyton Associates (Preparer), a recognized leader in groundwater investigation, employing “environmental professionals” as defined in the CERCLA statute.
- 3) The Preparer utilized good and customary practices to make all appropriate inquiries related to the site assessment.
- 4) The report based on the ESA is well-prepared, accurate, comprehensive, and consistent with the requirements of the CERCLA.

The TWDB staff finds that the EPWU has fulfilled Condition 34 in TWDB Resolution Number 15-081, by submitting an ESA “in form and substance acceptable to the (TWDB’s) Executive Administrator.”

After completing the ESA, the preparer concluded that “The past and present uses of the [property] do not appear to have resulted in...environmental impairment. At this time, [the Preparer] finds no evidence supporting the need for further environmental assessment of the [property].” Although the Preparer discovered no significant environmental hazards or contaminants meeting the CERCLA criteria, the assessment identified a number of facilities within the proposed project area that might affect the intended development of the site’s groundwater resources in conjunction with the present TWDB funded project. These facilities include: a small active gypsum mine; an above-ground storage tank containing diesel fuel used at the mine; flood-control structures and associated groundwater recharge wells; existing wells supplying water for irrigation and livestock; test wells and borings for exploration of oil, natural gas, sodium sulfate, and groundwater resources, and for a seismic survey; abandoned domestic wells; natural gas

pipelines; a former illegal dumpsite (remediated); and a small building (“ceramic art studio”) that may contain asbestos insulation and/or lead-based paint. The preparer recommended plugging the abandoned domestic wells, an uncompleted irrigation well, and boreholes used for sodium sulfate exploration and a seismic survey (“shot hole”), and testing potentially hazardous materials at the ceramic art studio.

#### Recommendations

Based on an environmental review consistent with 31 TAC § 363.14, the staff recommends implementation of the following measures to ensure the long-term viability of this TWDB- funded project, and that the project would not result in adverse impact on the quality of the human environment and protected natural resources.

- Following acquisition of the land and associated water rights, the El Paso Water Utilities Public Service Board must actively manage the property and aquifer to ensure that activities within the project area will not jeopardize the intended use of the land and groundwater as an adequate source of readily treatable groundwater in the future;
- All environmentally sensitive or potentially hazardous areas identified in the Phase I Environmental Site Assessment must be avoided, or conditions within those areas must be remediated to a status commensurate with the intended use of the land and groundwater as an adequate source of readily treatable drinking water in the future;
- If the El Paso Water Utilities Public Service Board obtains additional funding from the Texas Water Development Board for design and/or construction of facilities within the project area, or for other activities affecting the property, the release of funds must be conditioned that a full environmental assessment of the proposed project must be conducted and the Executive Administrator must issue a favorable environmental finding consistent with applicable requirements of the funding program;
- Standard emergency condition for the discovery of cultural resources; and
- Standard emergency condition for the discovery of threatened or endangered species.

I recommend that the Executive Administrator find the proposed project to be environmentally sound, and that funds for acquisition of land and associated water rights should be released once other requirements are satisfied.

KP: SCC:

