

TO: Board Members

THROUGH: Kevin Patteson, Executive Administrator
Les Trobman, General Counsel
Jeff Walker, Deputy Executive Administrator

FROM: Jessica Zuba, Director, Regional Water Planning & Development
Nancy Richards, Team Manager, East Region
Annette Mass, Staff Attorney

DATE: April 20, 2015

SUBJECT: Orangefield Water Supply Corporation Project No. 73694 New Collection System
Request for Extension of Commitment

ACTION REQUESTED

Consider approving by resolution, a request from the Orangefield Water Supply Corporation (Orange County) to amend TWDB Resolution 14-119, by extending the commitment period to finance wastewater system improvements through the Clean Water State Revolving Fund.

BACKGROUND

The project as approved by the Texas Water Development Board (TWDB) involved the planning and design phases to provide first time sewer service to approximately 900 connections via a new vacuum pump collection system. The Orangefield Water Supply Corporation (Corporation) qualified for funding through the Nonpoint Source (NPS) Section of the Clean Water State Revolving Fund (CWSRF) and ranked as the number one NPS project on the FY2015 Intended Use Plan. The Corporation submitted an application in August 2014 and received a commitment for \$1,565,000 from the Board at its December 11, 2014 meeting.

KEY ISSUES

Because the Corporation is considered a private, taxable borrower in the CWSRF program, current TWDB rules do not allow the Corporation the usual interest rate subsidy (1.2% below market for CWSRF non-equivalency) and as such, the Corporation has requested funding from United States Department of Agriculture-Rural Development (USDA-RD) to fund planning, design, and construction of the project. If eligible for USDA-RD funding, the Corporation could qualify for at least 50% grant for the project. The Corporation should know by early June the status of their application with USDA-RD. The Corporation is also discussing possible conversion to a Special Utility District. Corporation staff is working with their representatives on the conversion.

At this time, the Corporation is requesting a nine month extension of time to close the loan in order to perform their due diligence in evaluating the funding options available to them.

RECOMMENDATION

Staff recommends a nine month extension of this commitment to allow the Corporation time to review its options for funding and conversion to a Special Utility District. Staff recommends amending TWDB Resolution 14-119 to extend the commitment to February 29, 2016.

- Attachments:
1. Resolution (15-)
 2. Resolution (14-119)
 3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 14-119
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE \$1,565,000 ORANGEFIELD WATER
SUPPLY CORPORATION TAXABLE REVENUE CERTIFICATES OF OBLIGATION, PROPOSED
SERIES 2015

(15-)

WHEREAS, at its December 11, 2014 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 14-119, made a commitment to provide financial assistance to Orangefield Water Supply Corporation (Corporation) for the purpose of financing improvements to the Corporation's wastewater system in the amount of \$1,565,000, consisting of the TWDB's purchase of \$1,565,000 Orangefield Water Supply Corporation Taxable Revenue Certificates of Obligation, Proposed Series 2015, from the Clean Water State Revolving Fund program, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, by letter dated March 27, 2015, the Corporation requested to extend the TWDB's commitment for nine (9) months to provide the Corporation time to evaluate its funding options for Project No. 73694; and

WHEREAS, the TWDB hereby finds that the amendment to the term of this loan is reasonable and that the request 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 considerations and findings, the TWDB resolves as follows:

1. the commitment of the TWDB to provide financial assistance in the amount of \$1,565,000, as authorized in TWDB Resolution No. 14-119, is amended to extend the commitment to February 29, 2016; and
2. that all other terms and conditions of TWDB Resolution No. 14-119 shall remain in full force and effect.

APPROVED and ordered of record this the 19th day of May, 2015.

TEXAS WATER DEVELOPMENT BOARD

Carlos Rubinstein, 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
\$1,565,000 TO ORANGEFIELD WATER SUPPLY CORPORATION
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,565,000 ORANGEFIELD WATER SUPPLY CORPORATION TAXABLE REVENUE
CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2015**

(14-119)

WHEREAS, the Orangefield Water Supply Corporation, located in Orange County, Texas (Corporation) has filed an application for financial assistance in the amount of \$1,565,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, and design of certain wastewater system improvements identified as Project No. 73694; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,565,000 Orangefield Water Supply Corporation Taxable Revenue Certificates of Obligation, 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 Corporation has offered a pledge of system revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue pledged by the Corporation will be sufficient to meet all the Obligations assumed by the Corporation, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Corporation has submitted a proposed program of water conservation 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 Corporation has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007.

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

A commitment is made by the TWDB to the Orangefield Water Supply Corporation for financial assistance in the amount of \$1,565,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$1,565,000 Orangefield Water Supply Corporation Revenue

Certificates of Obligation, 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 Corporation;
3. this commitment is contingent upon the Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 375;
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 Corporation, 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 Corporation'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 Corporation's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring the Corporation 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 Corporation 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 Corporation 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 Corporation 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 Corporation, 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 Corporation 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 Corporation 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 Corporation 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 Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

State Revolving Fund Conditions

15. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
16. 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 Corporation, 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;

17. the Obligations must include a provision stating that the Corporation 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 Corporation 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;
18. 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 Corporation will adhere to the approved project schedule;
19. The Obligations must contain a covenant that the Corporation 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;
20. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
21. the Corporation shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

22. prior to or at closing, the Corporation shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;
23. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;
24. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Corporation 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;

25. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design, engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the Corporation must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq.*

Pledge Conditions For The Loan

26. 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 twenty-four (24) months following the issuance of the Obligations;
27. if the Corporation 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;
28. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) the Corporation certifies that the Corporation is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the Corporation must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator;

Water Supply Corporation Conditions

29. the Corporation's indebtedness to the TWDB shall be evidenced by loans specifically secured by:
 - a. a first or parity lien on the gross revenues of the Corporation's water system (System); and
 - b. a first or parity lien mortgage on the System;
30. upon closing or within 20 days after closing, the Corporation must file a security instrument with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9 to evidence the TWDB's security interest in any equipment directly related to water supply and/or sewer service, owned or to be acquired by the Corporation. A copy of the recorded security instrument shall be submitted by the Corporation to the TWDB within thirty (30) days of its

filing with the Secretary of State's Office; upon closing or within 20 days after closing, the Corporation must file a Deed of Trust with the County Clerk of the county in which the property is located, as required by Business and Commerce Code, Chapter 9, or a Utility Security Instrument with the Secretary of State's Office and corresponding notice with the County Clerk, as required by Business and Commerce Code, Chapter 261, as evidence of the TWDB's security interest in the Corporation's System. Within thirty (30) days of the date of each filing, the Corporation shall submit a copy of the recorded instrument to the TWDB;

31. upon closing or within 20 days after closing, the Corporation must file a security instrument with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9 or Chapter 261 to evidence the TWDB's security interest in any personal property directly related to water supply and/or sewer service, owned or to be acquired by the Corporation. A copy of the recorded security instrument shall be submitted by the Corporation to the TWDB within thirty (30) days of its filing with the Secretary of State's Office;
32. prior to closing, the Corporation must obtain a commitment from a title insurance company in accordance with the standards established by the Texas Department of Insurance, resulting in the issuance of a mortgagee title insurance policy on the property owned in fee simple, upon which the TWDB will be given a parity first or first lien mortgage. A copy of the mortgagee title insurance policy shall be submitted to the TWDB within thirty (30) days of its execution;
33. prior to closing, the Corporation must cure any defects or liens upon the property listed in Schedule C of the title insurance company commitment that the Executive Administrator deems necessary;
34. prior to release of funds for construction, Corporation must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the Corporation has the legal authority necessary to complete the acquisitions;
35. prior to closing, the Corporation must submit to the Executive Administrator evidence that the Corporation's bylaws have been amended to include the following requirements:
 - a. as long as the Corporation is indebted for a loan or loans made by or through the TWDB, the bylaws shall not be altered, amended or repealed without the prior written consent of the Executive Administrator; and
 - b. the Corporation is a nonprofit corporation; no part of the income of the Corporation will be distributed to the Corporation's members, directors, or officers;
36. prior to closing, if the Corporation is pledging a lien on real property that is to be on parity with a lien or liens on real property securing debt that will remain outstanding after closing the TWDB's loan, then the Corporation must execute a Parity Agreement with each entity that holds such debt that is acceptable in form and substance to the Executive Administrator;
37. the Obligations shall include a special covenant prohibiting the Corporation from encumbering, pledging or otherwise impairing the revenues of the System in any manner with respect to the

payment of any Obligations or with respect to any liability, except for the payment of the following: (1) maintenance and operating expenses payable within the current fiscal year with current revenues; and (2) additional debt, and that the Corporation shall in no way encumber, pledge or otherwise impair its title to the land used by or for the System or any interests therein, including improvements and facilities of the System, without prior TWDB approval;

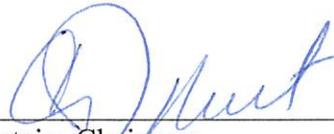
PROVIDED, however, the commitment is subject to the following special conditions:

Special Conditions:

- 38. the Corporation 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;
- 39. prior to closing, the Corporation shall adopt and implement the water conservation program approved by the TWDB; and
- 40. the Obligations must include a provision requiring that, prior to any action by the Corporation 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 11th day of December, 2014.

TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

DATE SIGNED: _____

12/11/14

ATTEST:



Kevin Patteson
Executive Administrator



ORANGEFIELD WATER SUPPLY CORPORATION

PO Box 398 / 9913 FM 105
Orangefield, TX 77639
Phone (409)735-9422
info@orangefieldwsc.com

March 27, 2015

Nancy Richard
Team Manager, East Texas Region (Planning Groups H/I)
Water Supply & Infrastructure
1700 N. Congress Ave
Austin, TX 78711

Ms. Richard:

I apologize for late getting back to you about Orangefield Water Supply Corporation's (OWSC) request to extend the closing of our approved Sewer Improvements loan from Texas Water Development Board (TWDB) by nine months from May 31, 2015. OWSC wishes to evaluate the options available to the corporation for future expansion and operation requirements of TWDB.

OWSC has applied with USDA, RUS Division, for funding for both the Victory Gardens Water and Sewer Improvements. We expect to have a decision from the USDA in 45 days or less. OWSC will review the letter of conditions from USDA, with loan approval, for a final decision on going forward with the Victory Gardens Improvement Project. That decision will include the options available for the TWDB Sewer Loan.

Again thanks for the TWDB Team for helping OWSC effort to improve the quality of life in the Victory Gardens Community.

Joe Morton
Interim General Manager
409-735-9422
Joemorton39@yahoo.com

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