

TO: Board Members

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

FROM: Clay Schultz, Team Manager, Team 5 – Central Texas Region
Alexis Lorick, Assistant General Counsel

DATE: August 26, 2015

SUBJECT: Request by the Lower Colorado River Authority for an extension of a loan commitment made in TWDB Resolution No. 14-72
TWDB Project No. 21745

ACTION REQUESTED

Approve by resolution, a request from the Lower Colorado River Authority (Travis County) to amend Texas Water Development Board (TWDB) Resolution No. 14-72 to extend the commitment period for a loan from the Texas Water Development Fund to finance planning, acquisition, design, and construction of an off-channel reservoir, for six (6) months.

BACKGROUND

In 2012, the LCRA set a goal of increasing water supply by 100,000 acre-feet per year. The additional water would supplement its existing water supply and would be used to help meet the needs of customers served by LCRA throughout the lower Colorado River basin.

At the September 4, 2014, meeting of the TWDB, the Lower Colorado River Authority (LCRA) received a commitment for \$250,000,000 from the Texas Water Development Fund (DFund) to finance the planning, acquisition, design, and construction phases of an off-channel reservoir and associated improvements. At the February 25, 2015 meeting of the TWDB, the commitment of financial assistance to LCRA was increased to \$255,000,000 in order to ensure consistency with the TWDB’s bond issuance. In addition, the TWDB made a motion to amend Standard Condition No. 4 to read:

The Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, at a redemption price of par, together with accrued interest to the date fixed for redemption.

The proposed project will enhance LCRA’s ability to help meet the various competing water demands throughout its service area in the lower Colorado River basin, including agricultural,

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: Bech Bruun, Chairman | Carlos Rubinstein, Member | Kathleen Jackson, Member
:
: Kevin Patteson, Executive Administrator

industrial, municipal and other demands. The project includes construction of an off-channel water reservoir, a new river outfall, a new re-lift pump station, and upgrades to the existing pump stations and canal system. The project is located in Wharton County and will use existing surface water rights to increase LCRA's overall available water supply. LCRA's overall system firm yield is expected to increase from 600,000 acre-feet to 690,000 acre-feet per year.

KEY ISSUES

On July 13, 2015, LCRA posted a request for proposals for construction of the proposed project and expects to receive responses in early September 2015 and begin negotiations immediately. Contract award is expected to be in November and construction is expected to begin in January of 2016. Based on this timeline, LCRA will not be able to close on the bonds prior to the commitment expiration date of September 30, 2015. The requested six-month commitment extension will provide LCRA with flexibility to ensure a thorough evaluation of proposals prior to the sale of bonds and loan closing.

RECOMMENDATION

The Executive Administrator recommends approving an extension of the commitment made in Resolution No. 14-72 by six (6) months, until March 31, 2016. The extension will allow LCRA time to close on the funds needed and avoid the need to submit a new financial assistance application.

- Attachments: 1. Resolution (15-)
2. Resolution (14-72)
3. LCRA Letter of Request, dated July 20, 2015

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 14-72, AS AMENDED,
TO EXTEND THE COMMITMENT PERIOD FOR THE
LOAN OF \$255,000,000 TO THE
LOWER COLORADO RIVER AUTHORITY
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II

(15-)

WHEREAS, at its September 4, 2014 meeting, the Texas Water Development Board (TWDB) by TWDB Resolution No. 14-72, made a commitment to provide financial assistance in the amount of \$250,000,000 to the Lower Colorado River Authority (Authority) through a loan from the Texas Water Development Fund II to finance water system improvements and refund certain commercial paper, identified as Project No. 21745; and

WHEREAS, at its February 25, 2015 meeting, the TWDB amended TWDB Resolution 14-72 to increase its loan to the Authority to an amount not to exceed \$255,000,000 and also amend the language of Standard Condition Number 4 to require that:

“The Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, at a redemption price of par, together with accrued interest to the date fixed for redemption”; and

WHEREAS, the Authority, by written request dated July 20, 2015, seeks an extension to the TWDB’s commitment of financial assistance in TWDB Resolution No. 14-72; and

WHEREAS, pursuant to TWDB Resolution No. 14-72, the commitment period for the Authority’s loan expires September 30, 2015; and

WHEREAS, the Executive Administrator recommends extending the TWDB’s commitment for an additional six (6) months to allow sufficient time to close the loan, and refund certain commercial paper, all as is more specifically set forth in the recommendations of the Executive Administrator’s staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that granting an extension of six (6) months is in the public interest.

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

1. the commitment of the TWDB to provide financial assistance in an amount not to exceed \$255,000,000, as amended by the TWDB on February 25, 2015, to the Authority is further amended, extending the expiration of the TWDB’s commitment six (6) months to March 31, 2016; and

2. all other terms and conditions of TWDB Resolution No. 14-72, as amended by the TWDB on February 25, 2015, shall remain in full force and effect.

APPROVED and ordered of record this, the 9th day of September, 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 TO
LOWER COLORADO RIVER AUTHORITY
FROM THE FINANCIAL ASSISTANCE ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF
\$250,000,000 LOWER COLORADO RIVER AUTHORITY REVENUE BONDS
PROPOSED SERIES 2015

(14-72)

WHEREAS, the Lower Colorado River Authority, located in Travis County, Texas (Authority), has filed an application for financial assistance in the amount of \$250,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, established by Texas Water Code § 17.959, to finance water system improvements and refund commercial paper, identified as Project No. 21745; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$250,000,000 through the TWDB's purchase of \$250,000,000 Lower Colorado River Authority Revenue Bonds, 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 Authority has offered a pledge of Pledged Revenues as defined in the Authority's Resolution No. 99-165b, Master Resolution Establishing the Lower Colorado River Authority Revenue Financing Program (Master Resolution), as sufficient security for the repayment of the Obligations; and

WHEREAS, in accordance with Texas Water Code § 17.124, the TWDB has considered all matters required by law and in particular the following:

1. the needs of the area to be served by the water supply project, the benefit of the water supply project to the area, the relationship of the water supply project to the overall, statewide water needs, and the relationship of the water supply project to the approved regional and state water plans; and
2. the availability of revenue to the Authority, from all sources, for the ultimate repayment of the cost of the water supply project, including interest.

WHEREAS, the TWDB hereby finds:

1. that the public interest requires state assistance in the water supply project, in accordance with Texas Water Code § 17.125(a)(1);

2. that the tax and/or revenue pledged by the Authority will be sufficient to meet all the Obligations assumed by the Authority during the succeeding period of not more than 50 years, in accordance with Texas Water Code § 17.125(a)(2);
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 application and financial assistance requested meet the requirements of Chapter 17, Subchapters D, E, and L, Water Code, and the TWDB's rules set forth in 31 TAC Chapter 363, Subchapter A;
5. 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); and
6. that the current water audit required by Texas Water Code § 16.0121 has been completed by the Authority and filed with the TWDB if the Authority is a retail public utility providing potable water, in accordance with Texas Water Code § 16.053(j).

NOW THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the TWDB to Lower Colorado River Authority for financial assistance in the amount of \$250,000,000 from the Financial Assistance Account of the Texas Water Development Fund II, to be evidenced by the Board's purchase of \$250,000,000 Lower Colorado River Authority Revenue Bonds, Proposed Series 2015. This commitment will expire on September 30, 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 363;

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, 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 required under the TWDB's financial assistance program and not previously provided with the application, the Authority shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed, must be reflected in the contract, and must be acceptable to the Executive Administrator;
13. prior to closing, when any portion of loan proceeds are to be held in escrow or in trust, the Authority 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;
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;
16. 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 and manufactured goods produced in the United States, as required by Texas Water Code § 17.183;

Conditions Related To Tax-Exempt Status

17. 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;

18. 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;
19. 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);
20. 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;
21. 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;
- 22. 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;
 - 23. 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;
 - 24. 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;
 - 25. 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;
 - 26. 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;

Pledge Conditions For The Loan

- 27. the Obligations must require the accumulation of a reserve fund of no less than one half of the average annual debt service requirements. The reserve fund may be funded with bond proceeds and is to be accumulated in equal monthly installments over a period not

to exceed thirty-six (36) months immediately following the issuance of the Obligations;

28. 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; and
29. the Obligations must contain a provision that, in accordance with the Master Resolution, additional revenue obligations may only be incurred if the Board of Directors of the Authority finds that the Authority will have sufficient funds to meet the financial obligations of the Authority, including the receipt of Pledged Revenues in amounts sufficient to satisfy the Annual Debt Service Requirements and to meet all other financial obligations of the Authority payable from Pledged Revenues. In addition, the Authority shall not issue or incur Parity Debt unless an Authorized Representative shall deliver to the Board of Directors of the Authority an Officer's Certificate stating either (i) that, to the best of his or her knowledge, the Authority has not failed to comply with the covenants contained in the Master Resolution and each Supplement to any material extent, and the Authority is not in default, in any material extent, in the performance and observance of any of the terms, provisions, and conditions hereof or thereof, or (ii) that, after the issuance of such Parity Debt to cure an existing default, the Authority will not be in default, to any material extent, with respect to the performance or observance of any of the terms, provisions, and conditions of the Master Resolution and each Supplement.

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

Special Conditions:

30. the Obligations must contain a provision that the Authority will provide written notification to the Board at least 30 days prior to assuming Prior Encumbered Obligations, as that term is defined in the Master Resolution;
31. 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 363;
32. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the Authority has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
33. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have

issued a written finding that the Authority has the right to use the water that the project financed by the TWDB will provide.

APPROVED and ordered of record this, the 4th day of September, 2014.

TEXAS WATER DEVELOPMENT BOARD



A handwritten signature in blue ink, appearing to read "C. Rubinstein", is written over a horizontal line.

Carlos Rubinstein, Chairman

DATE SIGNED: _____

9-4-14

ATTEST:

A handwritten signature in blue ink, appearing to read "K. Patteson", is written over a horizontal line.

Kevin Patteson
Executive Administrator

July 20, 2015

T. Clay Schultz, Ph.D.
Team Manager, Central Region
Regional Water Planning & Development
Texas Water Development Board
1700 North Congress Avenue
Austin, Texas 78701

Dear Clay,

The Lower Colorado River Authority's current authorization to borrow Texas Water Development Board funds for the construction of the Lane City Reservoir expires on September 30, 2015. Please accept this letter as LCRA's formal request to extend that authorization through March 31, 2016. As you are aware, we have a request for proposal outstanding for construction of the reservoir and expect to receive responses in early September 2015. The loan authorization extension we are requesting will provide the needed flexibility to ensure a thorough evaluation of those responses prior to a sale of bonds.

Please let me know if you have any questions or need additional information. I can be contacted at 512-578-3294.

Sincerely,



Jim Travis
Treasurer
Lower Colorado River Authority