

AFFIRMATION OF COMMITMENT

BOARD DATE: September 22, 2015
LOAN RECIPIENT: East Rio Hondo Water Supply Corporation (62599)
ACTION REQUESTED: Affirm by resolution the commitment made in TWDB Resolution No. 13-103 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Emergency Water Lines

Funding Elements: Planning Acquisition Design Construction

Benefits: The proposed project will allow the East Rio Hondo Water Supply Corporation to resolve a water supply emergency situation it has recently experienced due to drought.

Key Issues: None.

Environmental Determination Type: Emergency Memo to File

Date Issued: June 12, 2015

Project Elements Covered:

1. Construct a booster pump station.
2. Install approximately 22,800 linear feet of 16-inch PVC transmission main.

- Mitigative Measures:
1. To assure compliance with the Migratory Bird Treaty Act, vegetation should not be cleared during the nesting season (March through August). If clearing cannot be avoided during the nesting season, a survey by a qualified biologist should be conducted to locate active nests, and if any active nests are located, a 50-foot buffer around the nest should be established until the young have fledged or the nest is abandoned;
 2. Standard emergency condition for the discovery of cultural resources; and,
 3. Standard emergency condition for the discovery of threatened and endangered species.

Environmental Finding includes all project components? Yes No

Additional review required for other project components? Yes No

Previous Findings issued? Yes No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
L1000198	Drinking Water State Revolving Fund	\$1,379,000
LF1000199	Drinking Water State Revolving Fund	\$591,000

Attachment: Resolution No. (15-)
Resolution No. (13-103)

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A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO
TWDB RESOLUTION NO. 13-103 AND LOAN COMMITMENT
TO THE EAST RIO HONDO WATER SUPPLY CORPORATION

(15-)

WHEREAS, at its September 19, 2013 meeting, the Texas Water Development Board (TWDB), by Resolution No. 13-103, made a commitment to provide financial assistance in the amount of \$1,970,000 to East Rio Hondo Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62599 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 371.72(e), the TWDB may release funds through the pre-design commitment option after receiving a favorable recommendation from its Executive Administrator that there appears to be no significant environmental impacts anticipated from the Project, based on preliminary environmental data provided by the Corporation; and

WHEREAS, pursuant to 31 TAC Chapter 371, Subchapter E, funds for the design of the Project may not be released until an environmental review has been completed; and

WHEREAS, the Executive Administrator has informed the TWDB of the issuance of an emergency environmental finding memorandum for a portion of the Project on June 12, 2015, such finding being subject to the following conditions including the standard emergency discovery conditions for threatened and endangered species and cultural resources in Project contract documents.

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

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitment made to the Corporation in TWDB Resolution No. 13-103; and
2. the TWDB approves the release of funds for acquisition and construction for a portion of the project from the Drinking Water State Revolving Fund loan to the Corporation for proposed improvements to the Corporation's water supply system, after all other appropriate conditions of TWDB Resolution 13-103 have been met.

PROVIDED, however, such commitments and TWDB resolution are further conditioned as follows:

1. the Corporation must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources as more fully specified in the final environmental finding of the Executive Administrator;

2. to assure compliance with the Migratory Bird Treaty Act, vegetation should not be cleared during the nesting season (March through August). If clearing cannot be avoided during the nesting season, a survey by a qualified biologist should be conducted to locate active nests, and if any active nests are located, a 50-foot buffer around the nest should be established until the young have fledged or the nest is abandoned; and
3. all other terms and conditions of TWDB Resolution 13-103 shall remain in full force and effect.

APPROVED and ordered of record this 22nd 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
EAST RIO HONDO WATER SUPPLY CORPORATION
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
A PROMISSORY NOTE IN THE AMOUNT OF \$1,379,000
AND EXECUTION OF A LOAN AGREEMENT
AND
\$591,000 LOAN FORGIVENESS

(13-103)

WHEREAS, the East Rio Hondo Water Supply Corporation, located in Cameron County, Texas (Corporation) has filed an application for financial assistance in the amount of \$1,970,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design and construction of certain water system improvements identified as Project No. 62599; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of a Promissory Note in the amount of \$1,379,000 and execution of a Loan Agreement and \$591,000 Loan Forgiveness, 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 gross revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that in its opinion the revenue and/or taxes 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 Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Corporation has adopted and implemented 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;
4. 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);

5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the Corporation and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the Corporation meets the definition of Disadvantaged Community in 31 TAC § 371.1(24) and is therefore eligible for subsidy through the DWSRF;

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

A commitment is made by the TWDB to the East Rio Hondo Water Supply Corporation for financial assistance in the amount of \$1,970,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of a Promissory Note in the amount of \$1,379,000 and execution of a Loan Agreement and \$591,000 Loan Forgiveness. This commitment will expire on September 30, 2014.

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. prior to closing, the Corporation must submit to the Executive Administrator an attorney's opinion confirming the legal authority for the Corporation to incur the Obligations that is acceptable to the Executive Administrator;
3. this commitment is contingent upon the Corporation's compliance with all applicable requirements contained in 31 TAC Chapter 371;
4. the Obligations must provide that the Corporation may prepay all or part of the amounts of principal and interest then due on the loan on any regularly scheduled payment date as specified in the Repayment Schedule, as revised, beginning no earlier than the first interest payment date that is 10 years from the date of the first delivery of funds from the TWDB to the Corporation pursuant to this Agreement;
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 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 under 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;
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;

State Revolving Fund Conditions

16. the Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
17. 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;
18. 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;
19. 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;

Drinking Water State Revolving Fund Conditions

20. prior to or at closing, the Corporation shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
21. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive

Administrator, that the Corporation has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;

22. 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;

Water Supply Corporation Conditions

23. 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 (the "System"); and
 - b. a first or parity lien mortgage on the System;
24. 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, and with the Secretary of State's Office, as required by Business and Commerce Code, Chapter 9, as evidence of the TWDB's first or parity lien mortgage security interest in the Corporation's System. Within thirty (30) days of the date of the filing of the Deed of Trust with the County Clerk and the Secretary of State's Office, whichever is later, the Corporation shall submit a copy of the recorded Deed of Trust to the TWDB;
25. 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;
26. 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 first or parity lien mortgage. A copy of the mortgagee title insurance policy shall be submitted to the TWDB within thirty (30) days of its execution;
27. 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;

28. prior to release of funds for construction, the 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;
29. 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;
30. 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;
31. 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;

Pledge Conditions for the Loan

32. 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 sixty (60) months following the issuance of the Obligations;
33. 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; and
34. no additional debt may be incurred unless net revenues for the last complete fiscal year or twelve (12) consecutive calendar month period ending out of the 15-month period immediately preceding the incurrence of additional debt shall not have been less than

1.25 times the average annual debt service requirements after giving effect of the additional debt. An independent certified public accountant, or independent firm of certified public accountants, acting by and through a certified public accountant, shall sign a written certificate to be delivered to the TWDB to the effect that, in the opinion thereof, during either the next preceding fiscal year, or any twelve consecutive calendar month period ending not later than 90 days preceding the month in which the then proposed additional debt is authorized, the net revenues were at least 1.25 times the average annual debt service requirements of all debt and additional debt which are scheduled to be outstanding after the delivery of the then proposed additional debt.

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

Special Conditions:

35. 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 371;
36. 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 Corporation 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;
37. 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 Corporation has the right to use the water that the project financed by the TWDB will provide;
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. 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;
40. prior to closing, the Corporation shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
41. the Loan Forgiveness Agreement must include a provision stating that the Corporation shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator;

42. prior to the release of acquisition, design, and construction funds for the emergency project components (the interconnect with Cameron County Irrigation District No. 6), the Corporation shall complete the consultations required by the Endangered Species Act and the National Historic Preservation Act; and
43. prior to the release of construction funds for the Cameron County Irrigation District No. 6 interconnect project, the City must submit an executed agreement with Cameron County Irrigation District No. 6 regarding the emergency connection that is acceptable to the Executive Administrator.

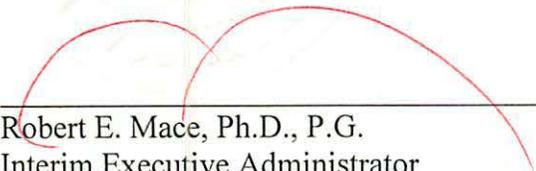
APPROVED and ordered of record this 19th day of September, 2013.

TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

ATTEST:



Robert E. Mace, Ph.D., P.G.
Interim Executive Administrator