

TO: Board Members

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

FROM: Jessica Zuba, Director, Regional Water Planning and Development
Lee Huntoon, Team Manager, Panhandle/West Region
Alexis Lorick, Staff Attorney

DATE: August 24, 2015

SUBJECT: Request by the City of Melvin for Extension of Time to Close Commitment
No. G1000401 and L1000426 (Project No. 10451)

ACTION REQUESTED

Approve by resolution, a request from the City of Melvin (McCulloch County) for a six-month extension of the \$170,000 commitment, in Resolution No. 15-029, from the Economically Distressed Areas Program (EDAP), to finance a radium removal project.

BACKGROUND

The City of Melvin (City) received a commitment on March 26, 2015, of \$170,000 from the Economically Distressed Areas Program to finance the planning and design phases of a corrective treatment facility to remove radium from the City's drinking water. The commitment will expire on September 30, 2015.

As an EDAP eligible project, in order to receive greater than 50 percent in grant assistance, a determination that a nuisance dangerous to the public must be found in the project area by the Texas Department of State Health Services (DSHS). If DSHS finds that the project meets the criteria for public health nuisance, the City would qualify for up to 100 percent grant funding from the Economically Distressed Areas Program Account of the Texas Water Development Fund II for the planning and design phases.

KEY ISSUES

The City currently is in violation of maximum contaminant levels (MCL) for radionuclides (combined radium and gross alpha particle activity) in their water system. In March of 2013, the Environmental Protection Agency (EPA) informed the City that it must implement or pursue immediate compliance of the MCLs for radionuclides. The City proposes to construct corrective treatment facilities for its existing water source using an ion exchange unit that uses a resin bed specifically designed to remove radium (Water Remediation Technologies Z-88TM).

Our Mission : **Board Members**

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas :
: Bech Bruun, Chairman | Kathleen Jackson, Member
:
: Kevin Patteson, Executive Administrator

In January 2015, the Texas Water Development Board (TWDB) sent a request to DSHS to conduct an EDAP survey to determine if a public health nuisance exists within the City.

The City's EDAP survey was performed on May 21, 2015, but the laboratory has not yet released analytical results. DSHS Division for Regulatory Services Policy, Standards, and Quality Assurance Unit will need to review the analysis to ascertain if the observations and evidence support a determination of a public health nuisance.

As their nuisance determination is still under review, it is estimated that a final decision will not be received with sufficient time prior to the expiration of the City's commitment. If a nuisance is found, additional time will be needed to amend the commitment and close on the funding. Therefore, the City is requesting a six-month extension allowing for time to receive a nuisance determination.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution 15-029 to extend the commitment to March 31, 2016.

Attachment(s): 1. Resolution (15-)
2. Resolution (15-029)
3. Extension Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 15-029 TO
EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE
TO
THE CITY OF MELVIN, TEXAS

(15-)

WHEREAS, at its March 26th 2015 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 15-029, made a commitment to provide financial assistance in the amount of \$170,000 to the City of Melvin, Texas, (City) through the proposed purchase of \$85,000 City of Melvin, Texas Combination Tax and Utility System Surplus Revenue Certificates of Obligation and a grant of \$85,000 from the Economically Distressed Areas Program Account (EDAP) of the Texas Water Development Fund II to finance improvements to its water system, identified as Project No. 10451; and

WHEREAS, pursuant to TWDB Resolution No. 15-029, the commitment period for TWDB funding will expire September 30, 2015; and

WHEREAS, the TWDB hereby finds that an amendment to TWDB Resolution No. 15-029 to extend the TWDB’s commitment for an additional six (6) months to allow sufficient time to close the financial assistance, 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, in order to effectuate these goals, the TWDB hereby finds that extending the TWDB’s commitment for six (6) months is in the public interest and will serve a public purpose.

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

1. the commitment date for financial assistance from the TWDB in Resolution No. 15-029 is extended to expire on March 31st, 2016, and;
2. that all other terms and conditions of TWDB Resolution No. 15-029 shall remain in full force and effect.

APPROVED and ordered of record this the 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
IN THE AMOUNT OF \$170,000 TO CITY OF MELVIN
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF \$85,000
CITY OF MELVIN, TEXAS COMBINATION TAX AND UTILITY SYSTEM SURPLUS
REVENUE CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2015
AND THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$85,000**

(15-029)

WHEREAS, City of Melvin (City), has filed an application seeking financial assistance in the amount of \$170,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, to finance certain water system improvements, identified as Project No. 10451; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of \$85,000 City of Melvin, Texas Combination Tax and Utility System Surplus Revenue Certificates of Obligation (together with all authorizing documents (Obligations)) and a grant of \$85,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, all as is more specifically set forth in the application and in recommendations of TWDB's staff; and

WHEREAS, the City has offered a pledge of taxes and surplus revenues of the utility system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular the following:

1. the feasibility of creating a conservation and reclamation district to provide and finance the water supply or sewer services, in accordance with Texas Water Code § 16.346;
2. the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring economically distressed areas financing, and the relative costs and benefits of all applications, in accordance with Texas Water Code § 17.929(a)(1);
3. the availability to the political subdivision of revenue from alternative sources for the payment of the cost of the proposed project, in accordance with Texas Water Code § 17.929 (a)(2);
4. financing of the proposed water supply or sewer project, in accordance with Texas Water Code § 17.929(a)(3);
5. the feasibility of achieving cost savings by providing a regional facility for water supply and wastewater service and the feasibility of financing the facilities by using funds from

the economically distressed areas account or any other financial assistance, in accordance with Texas Water Code § 17.929(a)(5);

6. the rates, fees and charges that the average customer to be served by the project will be able to pay, sources of funding available to the City, and any local funds of the City, in accordance with Texas Water Code § 17.933(d)(1);
7. sources of funding available to the City from federal and private funds and from other state funds, in accordance with Texas Water Code § 17.933(d)(2);
8. any local funds of the City to be served by the project if the economically distressed area to be served is within the boundary of the City, in accordance with Texas Water Code § 17.933(d)(3);
9. the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code, in accordance with Texas Water Code § 17.933(d)(4);

WHEREAS, the TWDB hereby finds:

1. that the City is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less;
2. that the area to be served by the proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, in accordance with Texas Water Code § 17.929(b);
3. that the County and City have adopted model subdivision rules as promulgated by the TWDB pursuant to Texas Water Code § 16.343 and the manner of enforcement, in accordance with Texas Water Code § 17.929(a) (4);
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 that 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, in accordance with Texas Water Code § 16.053(j); and
5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j).

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

A commitment is made by the TWDB to the City of Melvin for financial assistance in the amount of \$170,000 from the Economically Distressed Areas Account of the Texas Water Development Funds through the TWDB's proposed purchase of \$85,000 City of Melvin, Texas Combination Tax and Utility System Surplus Revenue Certificates of

Obligation, Proposed Series 2015 and a grant of \$85,000. This commitment will expire on September 30, 2015.

This 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 City's compliance with all applicable requirements contained in 31 TAC Chapter 363;
3. the Obligations and Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations and Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds and grant funds are public funds and, as such, the Obligations and Grant Agreement 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;
5. loan proceeds and grant funds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations and Grant Agreement shall include an environmental indemnification provision wherein the City 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 City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
6. prior to closing, and if not previously provided with the application, the City 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;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City 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;
8. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

9. 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 City;
10. 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;
11. the City, 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 City'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 City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
12. the Obligations must contain a provision requiring the City 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;
13. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus proceeds 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;
14. prior to closing, the City 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;

Conditions Related To Tax-Exempt Status

15. the City'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 City when rendering this opinion;

16. the City'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 City when rendering this opinion;
17. the Obligations must include a provision prohibiting the City 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);
18. 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;
19. the Obligations must include a provision requiring the City 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 City 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 City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City 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 City 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;
- 20. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 21. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 - 22. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 23. 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;
 - 24. the Obligations must provide that neither the City 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 City by the TWDB;

EDAP Conditions

- 25. The Grant Agreement and Obligations must include a provision that requires compliance

with Texas Water Code § 16.356 that no revenues received from rates or fees collected from the water/wastewater system to be constructed through this commitment shall be used for any purposes other than utility purposes and that the annual financial statement prepared by the City under Texas Local Government Code § 103.001 shall include a specific report on compliance with this condition;

26. prior to the release of funds provided for construction, the City must provide the TWDB with evidence satisfactory to the Executive Administrator that the City has received and will maintain a designation as an authorized agent of the Texas Commission on Environmental Quality, in compliance with Texas Health and Safety Code § 366.035;

Pledge Conditions for the Loan

27. the Obligations must contain a provision that provides as follows:
 - a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
 - b. if surplus revenues are based upon budgeted amounts:
 - i. the Obligations must include a requirement that the City transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that the City shall not transfer any funds from the City's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;
 - ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
 - ii. the Obligations must include a requirement that the City shall at all times maintain and collect sufficient rates and charges in conjunction with any

other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than 1.10 times debt service requirements of all outstanding Obligations of the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of such Obligations, or the City shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements;

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

Special Conditions:

28. prior to closing, the City and the Executive Administrator shall execute an Agreement that sets forth the terms and uses of the grant funds;
29. the Grant Agreement must include a provision stating that the City shall return any grant funds that are determined to be Surplus Funds in a manner determined by the Executive Administrator;

APPROVED and ordered of record this 26th day of March, 2015.

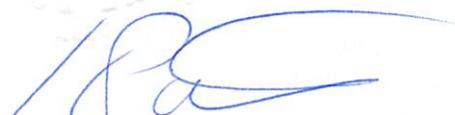
TEXAS WATER DEVELOPMENT BOARD



Carlos Rubinstein, Chairman

DATE SIGNED: 3/26/15

ATTEST:



Kevin Patteson
Executive Administrator

City of Melvin
PO Box 777
Melvin, TX 76858

August 17, 2015

Ms. Lee Huntoon
Texas Water Development Board
P.O. Box 13231
Austin, Texas 78711-3231

Re: TWDB Project 10451, City of Melvin EDAP PD Commitment Extension Request

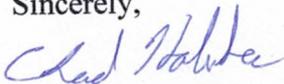
Dear Ms. Huntoon,

The City of Melvin received a commitment on 3/26/15 from the Texas Water Development Board for an \$85,000 grant and \$85,000 loan through the Economically Distressed Areas Program to finance the planning and design phase of a corrective treatment facility to remove radium from the city's drinking water, and allow compliance with an existing EPA Order.

TWDB staff had recommended to the city that upon completion of the delayed Texas Department of State Health Services "public nuisance" review, the commitment could be returned before the TWDB Board, for up to a possible 100% grant funding for this planning and design phase.

Whereas this type of project to allow the city to meet the primary drinking water standards under the Safe Drinking Water Act has historically met the criteria for a "public health nuisance" as determined through the EDAP MOU between TWDB, TCEQ and TDSHS, because of the limited number of local customers to share capital and operating costs, and the anticipated increase in future operating costs under the advanced treatment, the City of Melvin requests an extension of 6 months for the closing date for the EDAP PD commitment, to allow DSHS to complete their "public nuisance" review, and return to the TWDB Board for a possible increase in the grant allocation.

Sincerely,



Chad Holubec
Mayor
City of Melvin