

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** April 11, 2016  
**LOAN RECIPIENT:** Sol y Mar Water System (62629)  
**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 14-108 with the addition of conditions listed in the Mitigative Measures section of this memorandum

**Project Name:** Water System Improvements

**Funding Elements:**  Planning  Acquisition  Design  Construction

**Benefits:** The proposed project will allow Sol y Mar Subdivision to abandon its water well that contains nitrates above the maximum contaminant limits and connect to the City of San Juan water system for potable water.

**Key Issues:** None.

**Environmental Determination Type:** Finding of No Significant Impact

**Date Issued:** March 10, 2016

**Project Elements Covered:**

1. Install approximately 1,335 linear feet of 8-inch water line;
2. Install 29 service connections and 29 water meters; and,
3. Install two fire hydrants.

**Mitigative Measures:**

1. If vegetation clearing is required, avoid the peak nesting season of March through August to avoid destruction of individuals, nests or eggs. If project activities must be conducted during this time, nesting surveys will be conducted by a qualified biologist prior to commencing work and if active nests are observed, a buffer of vegetation (≥50-foot) will remain undisturbed around the nests until the young have fledged or the nest is abandoned.

**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, Board Member | Peter Lake, Board Member

Kevin Patteson, Executive Administrator

In addition, a Contractor Awareness Plan shall be developed to make construction workers aware of the potential of encountering migratory birds on the proposed project site and instructing them to avoid negatively impacting migratory birds.

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
LF1000272	Drinking Water State Revolving Fund	\$200,000

Attachment: (1) Resolution No. (16- )  
 (2) Resolution No. (14-108)

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A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 14-108 AND LOAN COMMITMENT  
TO THE SOL Y MAR WATER SYSTEM

(16- )

WHEREAS, at its November 20, 2014 meeting, the Texas Water Development Board (TWDB), by Resolution No. 14-108, made a commitment to provide financial assistance in the amount of \$200,000 to Sol Y Mar Water System (Water System), Texas, from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62629 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 371.72 and based on preliminary environmental data provided by the Water System, the TWDB may release funds for design and construction after receiving a favorable recommendation from its Executive Administrator that there appear to be no significant environmental impacts anticipated from the Project; and

WHEREAS, pursuant to 31 TAC Chapter 371, Subchapter E, funds for the design and construction 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 a Finding of No Significant Impact (FNSI) for the Project on March 10, 2016, 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 Water System in TWDB Resolution No. 14-108; and
2. the TWDB approves the release of funds for design and construction from the Drinking Water State Revolving Fund loan to the Water System for proposed improvements to the Water System's water treatment system, after all other appropriate conditions of TWDB Resolution No. 14-108 have been met.

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

1. the Water System 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; and

2. if vegetation clearing is required, avoid the peak nesting season of March through August to avoid destruction of individuals, nests, or eggs. If project activities must be conducted during this time, nesting surveys will be conducted by a qualified biologist prior to commencing work and if active nests are observed, a buffer of vegetation ( $\geq 50$ -foot) will remain undisturbed around the nests until the young have fledged or the nest is abandoned. In addition, a Contractor Awareness Plan shall be developed to make construction workers aware of the potential of encountering migratory birds on the proposed project site and instructing them to avoid negatively impacting migratory birds; and
3. all other terms and conditions in TWDB Resolution No. 14-108 shall remain in full force and effect.

APPROVED and ordered of record this 11th day of April, 2016.

TEXAS WATER DEVELOPMENT BOARD

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Bech K. Bruun, Chairman

DATE SIGNED: \_\_\_\_\_

ATTEST:

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Kevin Patteson  
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE  
TO SOL Y MAR WATER SYSTEM FROM  
THE DRINKING WATER STATE REVOLVING FUND  
THROUGH A LOAN IN THE AMOUNT OF \$200,000  
WITH 100% LOAN FORGIVENESS

(14-108)

WHEREAS, the Sol Y Mar Water System (Water System), located in Hidalgo County has filed an application for financial assistance in the amount of \$200,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design and construction of certain water system improvements identified as Project No. 62629; and

WHEREAS, the Water System seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$200,000 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the Water System for the loan and no taxes or revenues are required to be pledged by the Water System;
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 Water System is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less;
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); and
5. that the Water System meets the definition of a small water system in accordance with 31 TAC § 371.1(60) and the current Intended Use Plan, 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 Sol Y Mar Water System Water System for financial assistance in the amount of \$200,000 from the Drinking Water State Revolving Fund with 100% of the loan forgiven. This commitment will expire on November 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 Water System's compliance with all applicable requirements contained in 31 TAC Chapter 371;
3. the Loan Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Loan Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds are public funds and, as such, the Loan Forgiveness 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 shall not be used by the Water System when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Loan Forgiveness Agreement shall include an environmental indemnification provision wherein the Water System 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 Water System, 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 Water System 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;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Water System 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;
8. the Executive Administrator may require that the Water System execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

### State Revolving Fund Conditions

9. the Water System shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
10. the Loan Forgiveness Agreement 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 Water System, 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;
11. the Loan Forgiveness Agreement must include a provision stating that the Water System 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 Water System 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 the term of the Loan Forgiveness Agreement;
12. the Loan Forgiveness Agreement 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 Water System will adhere to the approved project schedule;
13. the Loan Forgiveness Agreement must contain a covenant that the Water System 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;

### Drinking Water State Revolving Fund Conditions

14. 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 Water System has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Loan Forgiveness Agreement; and
15. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Water System 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.

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

Special Conditions:

1. 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;
2. the Water System 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;
3. prior to closing, the Water System shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
4. the Loan Forgiveness Agreement must include a provision stating that the Water System shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 20<sup>th</sup> day of November, 2014.

TEXAS WATER DEVELOPMENT BOARD



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Carlos Rubinstein, Chairman

DATE SIGNED: 11-20-14

ATTEST:

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Kevin Patteson  
Executive Administrator