

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** May 5, 2016  
**LOAN RECIPIENT:** City of Dell City (62554)  
**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 13-60 with the addition of conditions listed in the Mitigative Measures section of this memorandum

Project Name: Reverse Osmosis Treatment Plant Project

Funding Elements:  Planning  Acquisition  Design  Construction

Benefits: The proposed project would improve the quality of the City's potable water to meet regulatory requirements of the Texas Commission on Environmental Quality for maximum concentrations of total dissolved solids and fluoride.

Key Issues: None.

Environmental Determination Type: Categorical Exclusion

Date Issued: March 24, 2016

Project Elements Covered:

1. Installing skid-mounted Reverse Osmosis (RO) water treatment equipment in an existing enclosed building.
2. Connecting the RO system to an existing supply of water used for irrigation for disposal of RO effluent through land application.
3. Connecting the new treatment equipment and effluent disposal system to existing electrical control and remote monitoring systems.

Mitigative Measures:

1. Standard emergency condition for the discovery of cultural resources.
2. Standard emergency condition for the discovery of threatened or endangered species.

Environmental Finding includes all project components?  Yes  No

Additional review required for other project components?  Yes  No

Previous Findings issued?  Yes  No

**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

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
LF1000118	Drinking Water State Revolving Fund (loan with 100% forgiveness)	\$244,450

Attachment: 1 - Resolution No. (16- )  
2 - Resolution No. (13-60)

SCC/dt

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 13-60 AND LOAN COMMITMENT  
TO THE CITY OF DELL CITY

(16- )

WHEREAS, at its May 16, 2013 meeting, the Texas Water Development Board (TWDB), by Resolution No. 13-60, made a commitment to provide financial assistance in the amount of \$244,450 to City of Dell City (City), Texas, from the Drinking Water State Revolving Fund, for the purpose of financing the water system improvements identified as Project No. 62554 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 371.72 and based on preliminary environmental data provided by the City, the TWDB may release funds for design 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 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 Categorical Exclusion for the Project on March 24, 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 City in TWDB Resolution No. 13-60; and
2. the TWDB approves the release of funds for design from the Drinking Water State Revolving Fund loan to the City for proposed improvements to the City's water treatment system, after all other appropriate conditions of TWDB Resolution No. 13-60 have been met.

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

1. the City 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. all other terms and conditions in TWDB Resolution No. 13-60 shall remain in full force and effect.

APPROVED and ordered of record this 5<sup>th</sup> day of May, 2016.

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 THE CITY OF DELL CITY  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH A LOAN IN THE AMOUNT OF \$244,450  
WITH 100% LOAN FORGIVENESS

(13-60)

WHEREAS, the City of Dell City, located in Hudspeth County, Texas (City) has filed an application for financial assistance in the amount of \$244,450 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning and design of certain water system improvements identified as Project No. 62554; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the execution of a Loan Forgiveness Agreement in an amount of \$244,450, all as is more specifically set forth in the application and in recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds:

1. that no debt Loan Forgiveness Agreement are to be assumed by the City for the loan and no taxes or revenues are required to be pledged by the City;
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 City is receiving \$500,000 or less in financial assistance and is therefore exempt from the requirement to provide a water conservation program;
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 the current water audit required by Texas Water Code § 16.0121 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the City 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 City of Dell City for financial assistance in the amount of \$244,450 from the Drinking Water State Revolving Fund with 100% of the loan forgiven. This commitment will expire on November 30, 2013.

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 City'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 City 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 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, 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 City 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 City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

### State Revolving Fund Conditions

9. the City 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 City, 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 City 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 City 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 City will adhere to the approved project schedule;

### Drinking Water State Revolving Fund Conditions

13. 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 City 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;
14. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City 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;

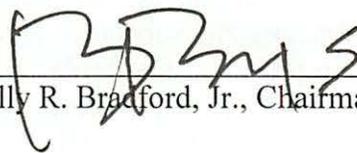
PROVIDED, however, the commitment is subject to the following special conditions:

15. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
16. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the EA.

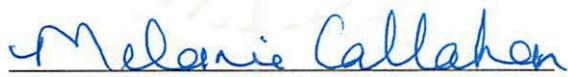
APPROVED and ordered of record this 16<sup>th</sup> day of May, 2013.

TEXAS WATER DEVELOPMENT BOARD



  
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Billy R. Bradford, Jr., Chairman

ATTEST:

  
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Melanie Callahan  
Executive Administrator