

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** May 5, 2016

**LOAN RECIPIENT:** City of Ranger (73634)

**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 12-38 with the addition of conditions listed in the Mitigative Measures section of this memorandum

**Project Name:** Facultative Lagoon Project

**Funding Elements:**  Planning  Acquisition  Design  Construction

**Benefits:** The proposed project will replace the City's existing wastewater treatment facility, which is badly deteriorated and prohibitively expensive to maintain. The new treatment facility and effluent disposal system will allow the City of Ranger (City) to meet regulatory requirements of the Texas Commission on Environmental Quality.

**Key Issues:** None.

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

**Date Issued:** April 5, 2016

**Project Elements Covered:**

1. Facultative lagoon.
2. Stabilization pond.
3. Irrigation holding pond.
4. Two center-pivot irrigation systems.
5. 8,000 feet of 12-inch diameter force main.
6. 8,000 feet of 8-inch diameter irrigation pipeline.
7. Upgrade an existing lift station.

**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

Mitigative Measures:

1. Compliance with the terms and conditions of Nationwide Permit 12 for Utility Line Activities, issued by the United States Army Corps of Engineers (permit expires March 18, 2017).
2. Development and implementation of a storm water pollution prevention plan to protect waterways from sedimentation and other pollution.
3. If vegetation clearing must occur during the nesting season of species protected under the Migratory Bird Treaty Act, March through August, the City will implement a survey of nests with eggs and nesting young, which will be avoided until the young have fledged.
4. To ensure protection of the Texas Horned Lizard in the event that it is present in the project area, the City will implement the following avoidance measures:
  - a) All construction personnel will be instructed to avoid, killing, injuring, or making any type of harmful disturbance to the Texas Horned Lizard during construction.
  - b) Pipeline trenches that remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the Texas Horned Lizard prior to backfilling.
  - c) Texas Horned Lizards discovered in any open trenches will be reported to Jacob & Martin, LLC, and Texas Parks and Wildlife Department, which will be consulted to develop plans to safely relocate the Texas Horned Lizards.
5. To the extent possible, project areas where pipelines are installed will be returned to pre-construction conditions following pipeline installation. Although the City does not anticipate the availability of funding for seeding native milkweed and nectar plants, measures to seed will be investigated should additional funds become available.
6. Standard emergency condition for the discovery of cultural resources.
7. Standard emergency condition for the discovery of threatened and endangered species.

Environmental Finding includes all project components?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Additional review required for other project components?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Previous Findings issued?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

Number	Program	Commitment
G120008	Clean Water State Revolving Fund – EQ	\$300,000
L120023	Clean Water State Revolving Fund - EQ	\$300,000
Total:		\$600,000

Attachment: Resolution No. (16- )  
Resolution No. (12-38)

SCC:

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 12-38 AND LOAN COMMITMENT  
TO THE CITY OF RANGER

(16- )

WHEREAS, at its April 19, 2012 meeting, the Texas Water Development Board (TWDB), by Resolution No. 12-38, made a commitment to provide financial assistance in the amount of \$600,000 to the City of Ranger (City), Texas, from the Clean Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 73634 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 375.92 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 375, 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 Finding of No Significant Impact (FNSI) for the Project on April 5, 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. 12-38; and
2. the TWDB approves the release of funds for design from the Clean Water State Revolving Fund loan to the City for proposed improvements to the City's wastewater treatment system, after all other appropriate conditions of TWDB Resolution No. 12-38 have been met.

PROVIDED, however, such commitment 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. the City must comply with the terms and conditions of Nationwide Permit 12 for Utility Line Activities, issued by the United States Army Corps of Engineers (permit expires March 18, 2017); and

3. the City must develop and implement a storm water pollution prevention plan to protect waterways from sedimentation and other pollution; and
4. if vegetation clearing must occur during the nesting season of species protected under the Migratory Bird Treaty Act, March through August, the City will implement a survey of nests with eggs and nesting young, which will be avoided until the young have fledged; and
5. to ensure protection of the Texas Horned Lizard in the event that it is present in the project area, the City will implement the following avoidance measures:
  - (a) all construction personnel will be instructed to avoid killing, injuring, or making any type of harmful disturbance to the Texas Horned Lizard during construction;
  - (b) pipeline trenches that remain open overnight, and/or for more than two daylight hours will be inspected for the presence of the Texas Horned Lizard prior to backfilling; and
  - (c) Texas Horned Lizards discovered in any open trenches will be reported to Jacob & Martin, LLC, and Texas Parks and Wildlife Department, which will be consulted to develop plans to safely relocate the Texas Horned Lizards;
6. to the extent possible, project areas where pipelines are installed will be returned to pre-construction conditions following pipeline installation. Although the City does not anticipate the availability of funding for seeding native milkweed and nectar plants, measures to seed will be investigated should additional funds become available; and
7. all other terms and conditions in TWDB Resolution No. 12-38 shall remain in full force and effect.

APPROVED and ordered of record this 5th 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 TWDB  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO  
THE CITY OF RANGER  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$300,000 CITY OF RANGER, TEXAS COMBINATION TAX AND SURPLUS  
WATERWORKS AND SEWER SYSTEM REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2012 AND  
\$300,000 IN LOAN FORGIVENESS

(12-38)

WHEREAS, the City of Ranger, located in Eastland County, Texas (the "City") has filed an application for financial assistance in the amount of \$600,000 from the Clean Water State Revolving Fund ("CWSRF") to finance planning and design activities for wastewater system improvements identified as Project No. 73634; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (the "TWDB") in the amount of \$600,000 through the TWDB's proposed purchase of \$300,000 City of Ranger, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Proposed Series 2012, and the execution of a Loan Forgiveness Agreement to reflect loan forgiveness in an amount of \$300,000 (together with all authorizing documents, the "Obligations"), 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 City has offered a pledge of ad valorem tax and surplus revenue from the waterworks and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that in its opinion the taxes and/or revenues pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code §15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§1251 *et seq.* (1972), as amended, as well as state law, in accordance with Texas Water Code §15.607;
3. that the City has submitted 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 the TWDB's rules, in accordance with Texas Water Code §15.607;
4. that the City has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code §15.007;

5. that the City meets the definition of "Disadvantaged Community" set forth in Texas Water Code §15.602(5), and 31 TAC §375.1(18) of the TWDB's rules and is therefore eligible for low-interest loans through the CWSRF; and

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

A commitment is made by the TWDB to the City of Ranger for financial assistance in the total amount of \$600,000 from the Clean Water State Revolving Fund, to be evidenced by the TWDB's purchase of \$300,000 City of Ranger, Texas Combination Tax and Surplus Waterworks and Sewer System Revenue Certificates of Obligation, Proposed Series 2012 and the execution of a Loan Forgiveness Agreement to reflect loan forgiveness in an amount of \$300,000. This commitment will expire on October 31, 2012.

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 City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in the rules, regulations and policies of the TWDB;
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 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, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission ("SEC") 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;

6. 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;
7. 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;
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, Chapter 2256, Government Code, (the "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "PFCA");
10. 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 Obligations 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;
11. the Obligations must include a provision requiring that, prior to any action by the City 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. The City 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;
12. 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;
13. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, the City 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 TWDB's 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;

14. if a bond insurance policy or a surety policy in lieu of a cash reserve is utilized:
  - a. thirty (30) days before closing, the City shall submit a draft of the policy to the TWDB's Executive Administrator for a determination on whether the policy provides appropriate security in accordance with TWDB policies;
  - b. prior to closing, the City shall provide the executed underlying documents of the policy (e.g. commitment letter, specimen policy) in a form and substance that is satisfactory to the TWDB's Executive Administrator;
  - c. prior to closing, the Attorney General of the State of Texas must have considered the use of said policy as a part of its approval of the proposed bond issue; and
  - d. after loan closing, the City shall notify the Executive Administrator no less than 30 days prior to converting from a cash reserve fund to a surety policy. Such a conversion may only be made if the proposed insurer or surety meets the financial guarantees established in the TWDB's rules and has satisfied the above requirements;
15. prior to closing, when any portion of loan proceeds are 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;
16. the Executive Administrator of the TWDB may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
17. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect;

#### Conditions Related To Tax-Exempt Status

18. 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;

19. 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;
20. 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";
21. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments 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 (reduced by the period of investment by the TWDB) 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 IRS 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 Loan, 125% of average annual debt service on the Loan, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Loan;
22. the Obligations must include a provision requiring the City to restrict the use of the proceeds of the Loan (or amounts within the control of the City that are treated as funds from the Bonds) or to pay rebate to the United States in order to satisfy the requirements of §148 of the Internal Revenue Code of 1986 (relating to arbitrage). The Obligations must provide that the City shall:
  - a. account for all Gross Proceeds (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 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;
- 23. 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;
  - 24. 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 Internal Revenue Code;
  - 25. 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;
  - 26. the transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form 8038 must be provided to the Executive Administrator prior to the release of funds;
  - 27. the Obligations must provide that the City will not acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from such City by the TWDB;

State Revolving Fund Conditions

- 28. the City shall submit outlay reports with sufficient documentation on costs (e.g.; invoices, receipts) on a quarterly or monthly basis in accordance with the TWDB's outlay report guidelines;
- 29. 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 recipient, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon;

30. the Obligations or 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. The City shall obtain a Data Universal Numbering System (“DUNS”) Number and shall register with Central Contractor Registration (“CCR”), and maintain current registration at all times during which the Obligations are outstanding;
31. The Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by federal statute and EPA regulations, and also shall provide that the City will adhere to an Executive Administrator-approved project schedule, which shall not be altered except for good cause shown and only with the written approval of the Executive Administrator;

#### Clean Water State Revolving Fund Conditions

32. prior to or at closing, the City shall pay a 1.85% origination fee to the TWDB calculated pursuant to TWDB rules;
33. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;
34. 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 Executive Administrator;
35. prior to release of funds for goods or professional services, the City must provide documentation that it has met the procurement requirements under the Disadvantaged Business Enterprises Program;

#### Pledge Conditions For The Loan

36. 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;

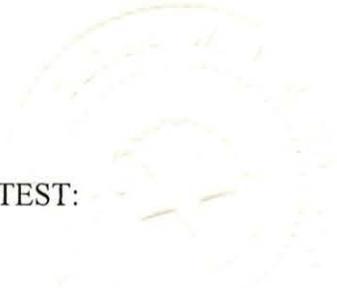
- ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, the City shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues 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
- iii. 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:

- 37. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to all of the TWDB's rules relating to such funding option;
- 38. prior to closing, the City must adopt and implement the water conservation program approved by the TWDB;

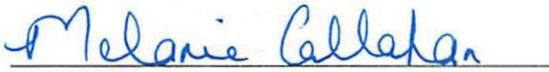
APPROVED and ordered of record this, the 19th day of April, 2012.

TEXAS WATER DEVELOPMENT BOARD



  
Edward G. Vaughan, Chairman

ATTEST:

  
Melanie Callahan  
Executive Administrator