

**TO:** Board Members

**THROUGH:** Jeff Walker, Executive Administrator  
Todd Chenoweth, General Counsel  
Jessica Zuba, Deputy Executive Administrator

**FROM:** T. Clay Schultz, Ph.D. Director, Regional Water Project Development  
Dain Larsen, Team Manager, Central Region

**DATE:** September 17, 2018

**SUBJECT:** Whitewater Springs Water Supply Corporation Project No. 62783  
Request for Extension of Commitment

**ACTION REQUESTED**

Consider approving by resolution a request from the Whitewater Springs Water Supply Corporation (Burnet County) to amend Texas Water Development Board Resolution No. 18-049 to extend the Drinking Water State Revolving Fund commitment for six months.

**BACKGROUND**

On April 16, 2018, the Whitewater Springs Water Supply Corporation (Corporation) received a commitment for financing from the Drinking Water State Revolving Fund (DWSRF) for the planning, acquisition, design, and construction of a new water well. The Corporation received a six-month commitment that expires on October 31, 2018

**KEY ISSUES**

The Corporation’s commitment includes the standard condition that it be on parity with any existing revenue obligations with the same pledge of security. The Corporation has not been able to obtain a parity agreement with its existing lender and therefore, instead proposes to refinance the debt with funds from the Texas Water Development Board (TWDB). The Corporation anticipates submitting an application for approximately \$350,000 and is requesting a six-month extension in order for the application to be considered and closed, thereby, allowing the existing DWSRF application to move forward with closing.

Whitewater Springs Water Supply Corporation

TWDB Project No. 62783

August 21, 2018

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**RECOMMENDATION**

A six-month extension of time for the commitment should allow for sufficient time to determine if the Corporation's refinancing request will be approved by TWDB and close on both the existing project and the potential refinancing DWSRF commitments with TWDB. The Executive Administrator recommends amending TWDB Resolution No. 18-049 to extend the commitment to April 30, 2019.

Attachment(s):

1. Resolution (18- )
2. Resolution (18-049)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AMENDING TWDB RESOLUTION NO. 18-049  
TO EXTEND THE COMMITMENT PERIOD FOR FINANCIAL ASSISTANCE TO  
THE WHITEWATER SPRINGS WATER SUPPLY CORPORATION

(18- )

WHEREAS, at its April 16, 2018 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 18-049, made a commitment to provide financial assistance to the Whitewater Springs Water Supply Corporation (Corporation) in the amount of \$500,000, consisting of the TWDB's purchase of a Promissory Note in the amount of \$200,000 and execution of a Loan Agreement, with \$300,000 in financial assistance to be forgiven, 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. 62783; and

WHEREAS, pursuant to TWDB Resolution No. 18-049, the commitment period will expire October 31, 2018; and

WHEREAS, by letter dated August 17, 2018, the Corporation requested that the TWDB amend TWDB Resolution No. 18-049 to extend the TWDB commitment of financial assistance for six months; and

WHEREAS, the Executive Administrator has reviewed the Corporation's request and recommends extending the TWDB commitment period for six months to allow the Corporation sufficient time to close its 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, the TWDB hereby finds that granting an extension of six months is for good cause, is within 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 of the TWDB to provide financial assistance in the amount of \$500,000, as authorized in TWDB Resolution No. 18-049, is further amended to extend the commitment period by six months to expire on April 30, 2019.
2. That all other terms and conditions of TWDB Resolution No. 18-049 shall remain in full force and effect.

APPROVED and ordered of record this 3<sup>rd</sup> day of October 2019.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Peter Lake  
Chairman

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

ATTEST:

\_\_\_\_\_  
Jeff Walker  
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO  
WHITEWATER SPRINGS WATER SUPPLY CORPORATION  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
A PROMISSORY NOTE IN THE AMOUNT OF \$200,000  
AND EXECUTION OF A LOAN AGREEMENT  
AND  
\$300,000 PRINCIPAL FORGIVENESS**

**(18-049)**

WHEREAS, the Whitewater Springs Water Supply Corporation (Corporation), located in Burnet County, Texas, has filed an application for financial assistance in the amount of \$500,000 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. 62783; and

WHEREAS, the Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase a Promissory Note in the amount of \$200,000 and execution of a Loan Agreement, and the execution of a Principal Forgiveness Agreement in the amount of \$300,000, 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 a first lien on its gross system revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue 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 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);

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); and
6. that the Corporation meets the definition of a very small system in accordance the applicable Intended Use Plan, and is therefore eligible for principal forgiveness through the DWSRF.

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

A commitment is made by the TWDB to the Whitewater Springs Water Supply Corporation for financial assistance in the amount of \$500,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of a Promissory Note in the amount of \$200,000 and execution of a Loan Agreement, and the execution of a Principal Forgiveness Agreement in the amount of \$300,000. This commitment will expire on October 31, 2018.

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 remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the Corporation to submit a final accounting and disposition of any unused funds;
8. 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 and completion of a final accounting 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) deposit into a reserve fund;
9. 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;
10. 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;
11. 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;

12. 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;
13. prior to closing, and if 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;
14. 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;
15. the Executive Administrator may require that the Corporation execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
16. 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:**

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

20. 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;
21. The Obligations and Principal Forgiveness Agreement must contain a covenant that the Corporation 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 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions:

22. prior to or at closing, the Corporation shall pay a 2.15% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371 and the applicable Intended Use Plan;
23. 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;
24. 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:

25. 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 (System); and
  - b. a first or parity lien mortgage on the System;
26. 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, as required by Business and Commerce Code, Chapter 9, or a Utility Security Instrument with the Secretary of State's Office and corresponding notice with the County Clerk, as required by Business and Commerce Code, Chapter 261, as evidence of the TWDB's security interest in the Corporation's System. Within thirty (30) days of the date of

each filing, the Corporation shall submit a copy of the recorded instrument to the TWDB;

27. 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 or Chapter 261 to evidence the TWDB's security interest in any personal property 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;
28. 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;
29. 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;
30. 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;
31. 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;
32. 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;

33. 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:

34. 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;
35. 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;
36. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant;

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

Special Conditions:

37. 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;
38. 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.
39. prior to closing, the Corporation shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;

40. the Principal Forgiveness Agreement must include a provision stating that the Corporation shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and
41. prior to the release of funds, the Corporation shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule.

APPROVED and ordered of record this 16th day of April 2018.

TEXAS WATER DEVELOPMENT BOARD



\_\_\_\_\_  
Peter Lake, Chairman

DATE SIGNED: 4/16/18

ATTEST:



\_\_\_\_\_  
Jeff Walker  
Executive Administrator



Attachment 3  
**Whitewater Springs Water Supply Corporation**  
**104 Whitewater Drive**  
**Bertram, TX 78605**

August 17, 2018

Mr. Dain Larsen  
Texas Water Development Board  
P.O. Box 13231  
Austin, TX 78711-3231

Re: Whitewater Springs WSC; TWDB Project No. 62783

Dear Mr. Larsen:

I am writing regarding the above referenced loan, which the Texas Water Development Board approved on April 16, 2018. As you will recall, one of the conditions for closing that loan was for Whitewater Springs WSC to have a parity agreement signed between our existing lender, Extraco Bank, and the TWDB. As you know, Extraco Bank has refused to execute any type of parity agreement with TWDB. Based upon you and your staff's recommendation, Whitewater Springs WSC will apply for a TWDB Development Loan, which funds would be used to buy out our existing loan with Extraco Bank.

Due to the processing time to obtain the TWDB Development Loan, we hereby ask that the TWDB extended the deadline for closing the existing 62783 loan by 6 months. As your staff noted, this six-month extension should provide sufficient time to apply and obtain the TWDB Development Loan.

Sincerely,

A handwritten signature in black ink that reads "Bill Hiers".

W. A. Hiers, Jr  
President

Sent via Email

cc via email: Mr. Randall Wilburn  
Mr. Mike Smith  
Mr. Don Rauschuber