

AGENDA ITEM MEMO

BOARD ITEM DATE: February 2, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply & Infrastructure

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

SUBJECT: Amendment to the Guadalupe-Blanco River Authority resolution

ACTION REQUESTED

Amend by resolution, previously adopted Texas Water Development Board (TWDB) Resolution No. 21-017 to modify the Guadalupe-Blanco River Authority's Clean Water State Revolving Fund commitment to allow for an additional loan series and extend the commitment period.

BACKGROUND

In 2021, the TWDB, through Resolution No. 21-017 approved a \$40,000,000 commitment to the Guadalupe-Blanco River Authority (Authority) from the Clean Water State Revolving Fund for the Lake Placid Dam Facilities Project with anticipated closings in May 2021 for planning and design costs and December 2021 for construction. The Authority closed the first series for planning and design costs in the amount of \$1,560,000 in June 2021 and has requested to close on \$30,935,000 in February 2022 leaving \$7,505,000 of the commitment remaining unclosed.

KEY ISSUES

Due to delays in the permitting and bidding processes, the Authority requests to close on the remaining \$7,505,000 commitment of funds by February 2023. The Authority anticipates that a United States Army Corps of Engineers permit will be approved and the

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Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member
Jeff Walker, Executive Administrator

final bid amount determined within the next six to twelve months. The Authority requests an amendment to the existing resolution to allow for a third loan series to be closed within twelve months of the expiration of the existing commitment.

RECOMMENDATION

The requested amendment does not change the total amount of financing to the Authority and will allow for the alignment of the amount of financing with the actual bid amount for construction. The Executive Administrator recommends that TWDB Resolution No. 21-017 be amended to extend the commitment to February 28, 2023 and allow the Authority to close on the remaining funding in one or more series.

Attachments:

1. Resolution (22-)
2. Resolution (21-017)
3. Authority's 2022 request letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 21-017
TO ALLOW THE \$38,440,000 GUADALUPE-BLANCO RIVER AUTHORITY
CONTRACT REVENUE BONDS (LAKE PLACID DAM FACILITIES PROJECT),
PROPOSED SERIES 2022 TO BE ISSUED IN ONE OR MORE SERIES
AND
TO EXTEND THE COMMITMENT PERIOD TWELVE MONTHS

(22 -)

WHEREAS, at its meeting on February 10, 2021, the Texas Water Development Board (TWDB), by TWDB Resolution No. 21-017, made a commitment to provide financial assistance in the amount of \$40,000,000 to the Guadalupe-Blanco River Authority (Authority) from the Clean Water State Revolving Fund to finance improvements to its stormwater system to be secured by the TWDB's purchase of \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A and \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021B, for Project No. 73897; and

WHEREAS, pursuant to TWDB Resolution No. 21-017, the commitment period will expire February 28, 2022; and

WHEREAS, on June 18, 2021, the TWDB and the Authority closed on \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Series 2021A; and

WHEREAS, by letter dated January 4, 2022, the Authority has requested that the TWDB amend the previous resolution, TWDB Resolution No. 21-017, to allow the Authority to close on the remaining committed funds in one or more series and to extend the commitment for an additional twelve (12) months to resolve unforeseen delays, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that the request by the Authority is reasonable, in the public interest, and will serve and public purpose; and

WHEREAS, in accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law.

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 \$38,440,000, as authorized in TWDB Resolution No. 21-017, is amended to allow the Authority to close in one or more series; and

2. the commitment of the TWDB to provide financial assistance in the amount of \$38,440,000, as authorized in TWDB Resolution No. 21-017, is amended to extend the commitment to February 28, 2023; and
3. all other terms and conditions of TWDB Resolution No. 21-017 shall remain in full force and effect.

APPROVED and ordered of record this the 2nd day of February 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN AN AGGREGATE
PRINCIPAL AMOUNT OF \$40,000,000 TO THE GUADALUPE-BLANCO RIVER AUTHORITY
FROM THE CLEAN WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$1,560,000 GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE
PLACID DAM FACILITIES PROJECT), PROPOSED SERIES 2021A AND \$38,440,000
GUADALUPE-BLANCO RIVER AUTHORITY CONTRACT REVENUE BONDS (LAKE PLACID
DAM FACILITIES PROJECT),
PROPOSED SERIES 2021B

(21-017)

WHEREAS, the Guadalupe-Blanco River Authority (Authority), located in Comal and Guadalupe Counties, has filed an application for financial assistance in the amount of \$40,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning design and construction of certain stormwater system improvements for Lake Placid identified as Project No. 73897; and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A and 2021B in an aggregate principal amount of not to exceed \$40,000,000 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the Authority has offered a pledge of contract revenues from an agreement between the Authority and Lake Placid Water Control and Improvement District as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 375.14; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the Authority will be sufficient to meet all the Obligations assumed by the Authority, 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.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the Authority has adopted and implemented 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 TWDB's rules.

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

A commitment is made by the TWDB to the Guadalupe-Blanco River Authority for financial assistance in an aggregate principal amount not to exceed \$40,000,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project) as follows:

(a) \$1,560,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021A; and

(b) \$38,440,000 Guadalupe-Blanco River Authority Contract Revenue Bonds (Lake Placid Dam Facilities Project), Proposed Series 2021B

The commitment for each series will expire on February 28, 2022.

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 Authority;
3. this commitment is contingent upon the Authority's compliance with all applicable requirements contained in 31 TAC Chapter 375;
4. the Obligations must provide that the Authority agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;
5. the Obligations must provide that the Obligations can be called for early redemption 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;
6. the Authority, 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 Authority'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 Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;
7. the Obligations must contain a provision requiring the Authority to enforce provisions under its contract with the Lake Placid Water Control and Improvement District which requires the District to levy a tax rate and/or maintain and collect sufficient rates and charges, as applicable, to produce funds in an amount necessary to meet the debt service requirements of the Authority for of all outstanding obligations and to maintain the funds established and required by the Obligations;
 8. the Obligations must include a provision requiring the Authority 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 Authority to submit a final accounting and disposition of any unused funds;
 9. the Obligations must include a provision requiring the Authority 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 in a manner as approved by the Executive Administrator;
 10. 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;
 11. 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;
 12. loan proceeds shall not be used by the Authority 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 Authority 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 Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
13. prior to closing, the Authority shall submit documentation evidencing the obligation of Lake Placid Water Control and Improvement to levy an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
 14. prior to closing, and if not previously provided with the application, the Authority 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;
 15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the Authority 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;
 16. the Executive Administrator may require that the Authority execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
 17. the Obligations must provide that the Authority will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
 18. the Obligations must provide that the Authority must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
 19. the Obligations must contain a provision requiring the Authority to maintain insurance coverage sufficient to protect the TWDB's interest in the project;

Conditions Related to Tax-Exempt Status

20. the Authority'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 Authority when rendering this opinion;

21. the Authority'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 Authority when rendering this opinion;
22. the Obligations must include a provision prohibiting the Authority from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds" within the meaning of section 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
23. 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 section 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 section 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;
24. the Obligations must include a provision requiring the Authority 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 section 148 of the Code. The Obligations must provide that the Authority 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 Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the Authority, provided that the Authority 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 section 148(f) of the Code, section 1.148-3 of the Regulations, and the rulings thereunder. The Authority 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;
- 25. the Obligations must include a provision prohibiting the Authority from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 26. the Obligations must provide that the Authority will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code;
 - 27. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 28. the Obligations must contain a provision that the Authority will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);
 - 29. the transcript must include evidence that the information reporting requirements of section 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 section 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;

30. the Obligations must provide that neither the Authority 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 Authority by the TWDB;

State Revolving Fund Conditions

31. the Authority shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
32. 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 Authority, 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;
33. the Obligations must include a provision stating that the Authority 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 Authority 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;
34. 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 Authority will adhere to the approved project schedule;
35. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
36. the Authority shall submit, prior to the release of funds, 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 projected useful life of the project, as determined by the schedule;

Clean Water State Revolving Fund Conditions

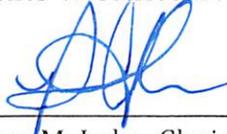
37. the Authority shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375;
38. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial 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;

Pledge Conditions for the Loan

39. upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
40. the Obligations must contain a provision requiring the Authority to maintain and enforce the contract with the Lake Placid Water Control and Improvement District so that revenues paid to the Authority by the District are sufficient to meet the Authority's obligations relating the Obligations;
41. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;
42. prior to closing, the Authority must submit an executed contract between the Authority and the Lake Placid Water Control and Improvement District regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contract shall include provisions consistent with the provisions of this Resolution regarding the District's annual audits, the levy of ad valorem taxes sufficient to collect the Authority's debt service obligations and additional parity obligations.

APPROVED and ordered of record this 10th day of February 2021.

TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 2/10/21

ATTEST:



Jeff Walker, Executive Administrator

January 4, 2022

Mr. Dain Larsen
Texas Water Development Board
1700 North Congress Avenue
P.O. Box 13231
Austin, Texas 78711-3231

Re: GBRA Lake Placid Project, CWSRF Project 73897

Dear Mr. Larsen:

On June 18, 2021, GBRA closed on \$1,560,000 of the \$40,000,000 TWDB Commitment for the Lake Placid Project. The initial closing was to obtain funds for the planning and design portion of the Project.

The bidding of the Lake Placid Project has been delayed due to the USACE requiring a permitting process different than the permitting process used for the similar Lake Dunlap Project that is currently under construction. The additional requirements has caused delays in bidding the Lake Placid Project and the bidding process will not take place prior to the TWDB Commitment expiration at the end of February 2022.

GBRA will be closing on \$30,935,000 of the remaining TWDB Commitment in early to mid-February which represents most of the engineer's estimate for construction of the project. However, GBRA would like the remaining unclosed portion of that TWDB Commitment extended for 6-12 months until after bids are received, the winning proposal is selected, and the final amount of funds needed to complete the project has been determined. At that time, GBRA would then close on that final amount or a portion of that final amount from the available funds remaining on the TWDB Commitment.

GBRA respectfully requests that the TWDB amend the TWDB Commitment resolution for the Lake Placid Project to extend the time on which to close on all funds from that TWDB Commitment for an additional 6-12 months.

Please do not hesitate to contact me at 830-379-5822 or by email if any additional information is needed.

Sincerely,



Darrell Nichols
Senior Deputy General Manager

Cc: Jeff Walker, TWDB Executive Administrator

Main Office: 933 East Court Street ~ Seguin, Texas 78155
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Guadalupe-Blanco River Authority
flowing solutions