

AGENDA ITEM MEMO

BOARD MEETING DATE: July 7, 2022

TO: Board Members

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

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Joe Koen, Manager, Regional Water Project Development

SUBJECT: City of Springtown Change of Project Scope

ACTION REQUESTED

Amend by resolution, the previously adopted Texas Water Development Board (TWDB) Resolution No. 17-071, as amended by Resolution 19-013, to modify the City of Springtown's State Water Implementation Revenue Fund for Texas (SWIRFT) project scope.

BACKGROUND

In July 2017, the TWDB approved a \$1,390,000 commitment to the City of Springtown (City) from the SWIRFT for planning, acquisition, design, and construction of a water supply project that included the drilling of two wells in the Trinity Aquifer, a wellhead treatment facility, and new treated water transmission pipelines from the wellheads to existing storage tanks.

In November 2019, the TWDB approved a request from the City for a change in scope from a groundwater to a surface water source, allowing funds to be put toward initial improvements to the raw water pump station. The project would ensure a reliable supply of water to meet projected needs.

KEY ISSUES

In February 2020, TWDB approved an Amendment to the 2017 State Water Plan to incorporate an amendment to the 2016 Region C Regional Water Plan to include the

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Leading the state's efforts in ensuring a secure water future for Texas and its citizens

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improvements to the surface water treatment plant (SWTP). The SWTP improvements are included in the current 2022 State Water Plan.

The City is requesting to amend the project scope to include improvements to the SWTP. This is the last step needed to fully implement the City's request which originally started in 2019.

RECOMMENDATION

To allow for the City to implement the project in the most cost-effective manor, the Executive Administrator recommends amending TWDB Resolution 17-071, as amended by 19-013, to change the project scope to include improvements to the SWTP.

Attachments:

1. Proposed Resolution (22-)
2. Resolution (17-071)
3. Resolution (19-013)
4. City of Springtown 2019 Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TEXAS WATER DEVELOPMENT BOARD RESOLUTION NO. 17-071,
AS AMENDED BY TEXAS WATER DEVELOPMENT BOARD RESOLUTION NO. 19-103,
PROVIDING FINANCIAL ASSISTANCE FROM THE STATE WATER IMPLEMENTATION
REVENUE FUND FOR TEXAS TO THE CITY OF SPRINGTOWN

(22 -)

WHEREAS, at its July 20, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-071, made a commitment to provide financial assistance in the amount of \$1,390,000 to City of Springtown (City) from the State Water Implementation Revenue Fund for Texas (SWIRFT) through the purchase of City of Springtown, Texas Combination, Tax and Surplus Revenue Certificates of Obligation Series 2017 for Project No. 51048 (Project), all as is more specifically set forth in the TWDB Resolution No. 17-071; and

WHEREAS, at its November 21, 2019, meeting, the TWDB through Resolution No. 19-103, amended TWDB Resolution No. 17-071, to modify the project scope; and

WHEREAS, the City has requested that the TWDB amend TWDB Resolution No. 17-071, as amended by TWDB Resolution No. 19-103, to modify the project scope to include improvements to the City's surface water treatment plant; and

WHEREAS, the TWDB hereby finds that the amendments to the terms of this loan are reasonable and that the request is in the public interest and will serve a 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. TWDB Resolution No. 17-071, as amended by TWDB Resolution No. 19-103, is amended to modify the project scope to include improvements to the City's surface water treatment plant.
2. All other terms and conditions of TWDB Resolution No. 17-071, as amended by TWDB Resolution No. 19-103, shall remain in full force and effect.

APPROVED and ordered of record this the 7th day of July, 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 THE AMOUNT OF \$1,390,000 TO
THE CITY OF SPRINGTOWN
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
THROUGH THE PROPOSED PURCHASE OF
\$1,390,000 CITY OF SPRINGTOWN, TEXAS COMBINATION, TAX AND SURPLUS REVENUE
CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2017**

(17-071)

WHEREAS, the City of Springtown (City), located in Parker and Wise Counties, Texas, has filed an application for financial assistance in the amount of \$1,390,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the planning, acquisition, design, and construction of certain water supply project(s) identified as Project No. 51048 (Project); and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$1,390,000 City of Springtown, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017, (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of ad valorem tax and surplus net revenues of the City's waterworks and sewer system 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 § 363.1307; and

WHEREAS, as a rural political subdivision, the City qualifies for additional interest rate subsidization of up to 50% at the following levels: 50% for a term of 20 years, 33.50% for term of 21 to 25 years, and 26.15% for a term of 26 to 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the City, pursuant to this Resolution; and

WHEREAS, these interest rate subsidies given above are based on assumptions necessary to generate an optimum debt service structure for the anticipated TWDB SWIRFT bond issuance, and are subject to modification as necessary to preserve and maintain the integrity of the SWIRFT Program; and

WHEREAS, the TWDB has carefully considered all matters required by law, and whether the Project as set forth in the application meets the criteria provided by Texas Water Code § 15.434(b) relating to a project for a rural political subdivision as defined by Texas Water Code § 15.992; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the Project is a recommended water management strategy project in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that the City is exempt from requirements to adopt a water conservation program because the City's appropriation of surface water for municipal, industrial, and other uses was less than 1,000 acre-feet a year as required by Texas Water Code § 11.1271;
4. that the City satisfactorily completed all requests by the Executive Administrator or a regional planning group for information relevant to the Project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);
5. that the current water audit has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.0121 and 31 TAC § 358.6;
6. that the City is a rural political subdivision as defined by Texas Water Code § 15.992; and
7. that the City has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to the City of Springtown for financial assistance in the amount of \$1,390,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$1,390,00 City of Springtown, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2017. This commitment will expire on December 31, 2017.

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 the City has complied with all of the requirements of the laws under which said Obligations were issued; 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 continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;
5. the City shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrar to provide a copy of all receipts documenting debt service payments to the TWDB and to the TWDB's designated Trustee;

The Following Conditions Must Be Included in the Obligations:

6. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, on any date beginning on or after the first interest payment date that 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;
7. the Obligations must include a provision wherein 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, 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 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;
8. the Obligations must contain a provision requiring the City to levy a tax and 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;
9. 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) 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 (2) eligible costs for the Project as authorized 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 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 the extent permitted by applicable law, 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, recycling 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;
13. the Obligations must include a provision stating that the City shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);
15. 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" within the meaning of § 141 of the Internal Revenue Code as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
16. 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 § 148(a) of the Code and Regulations, including to acquire or to replace funds that were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that 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 § 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;
17. the Obligations must include a provision requiring the City 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 § 148 of the Code. The Obligations must provide that the City 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 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, 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 § 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;

18. 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;
19. 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 Code;
20. the Obligations must provide that neither the City 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 City by the TWDB;

Pledge Conditions for the Loan

21. 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 that 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 that 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;

Conditions to Close or for Release of Funds:

22. 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;
23. prior to closing, if not previously provided with the application, the City shall submit executed contracts for engineering, and, if applicable, financial advisor and bond counsel, 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;
24. prior to closing, when any portion of financial assistance is 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;
25. prior to closing, 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;
26. prior to closing, the City's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
27. 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;
28. the transcript must include evidence that the information reporting requirements of § 149(e) of the Internal Revenue 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 § 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;

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

Special Conditions:

29. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of the Project that proposes surface water or groundwater development, the Executive Administrator must have either issued a written finding that the City has the right to use the water that the Project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
30. prior to the release of construction funds for that portion of a Project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the Project financed by the TWDB will provide.

APPROVED and ordered of record this, the 20th day of July, 2017.

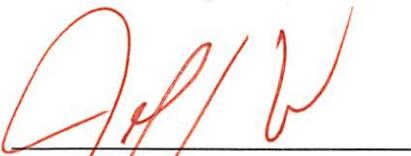
TEXAS WATER DEVELOPMENT BOARD



Bech K. Bruun, Chairman

DATE SIGNED: 7-20-17

ATTEST:



Jeff Walker
Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 17-071
TO MODIFY THE PROJECT SCOPE FOR
THE \$1,390,000 CITY OF SPRINGTOWN, TEXAS
COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
SERIES 2017**

(19 - 103)

WHEREAS, at its July 20, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-071, made a commitment to provide financial assistance to the City of Springtown (City) to finance certain water supply project(s) identified as Project 51048 in the amount of \$1,390,000 consisting of the TWDB's purchase of \$1,390,000 City of Springtown, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2017, from the State Water Implementation Revenue Fund for Texas, all as is more specifically set forth in the TWDB's Resolution and accompanying documentation, to which documents express reference is made; and

WHEREAS, the City has requested that the TWDB amend the previous resolution, TWDB Resolution No. 17-071, to modify the project scope; and

WHEREAS, the TWDB hereby finds that the amendments to the term of this loan are reasonable and that the request is in the public interest and will serve a 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. TWDB Resolution No. 17-071 and its accompanying documentation are amended to modify the project scope; and
2. that all other terms and conditions of TWDB Resolution No. 17-071 shall remain in full force and effect.

APPROVED and ordered of record this the 21st day of November, 2019.

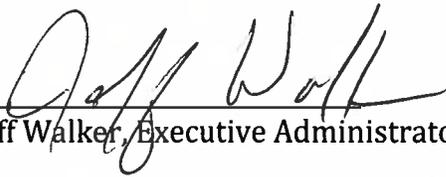
TEXAS WATER DEVELOPMENT BOARD



Peter M. Lake, Chairman

DATE SIGNED: 11/22/19

ATTEST:



Jeff Walker, Executive Administrator

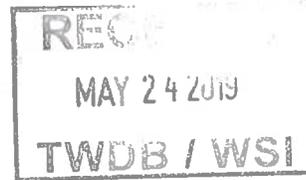


Where Country Meets Living

May 17, 2019

Luis Farias, Region C Manager
Texas Water Development Board
P.O. Box 13231
1700 N. Congress Ave.
Austin, Texas, 78711-3231

51048



RE: Amending the City of Springtown SWIFT Loan

Mr. Farias:

As you are aware, the City of Springtown is working to modify our current \$1,300,000 SWIFT Loan from the Texas Water Development Board (TWDB). The original SWIFT Loan was developed around a ground water improvements project. Based upon an engineering study commissioned by the City Council, the City has decided to not continue with the groundwater project at this time.

The City is now working towards a surface water project – including a Raw Water Station and improvements at the Surface Water Treatment Plant. Therefore, we wish to convert the current SWIFT Loan for use towards the surface water project.

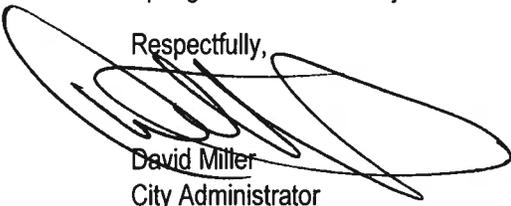
Per our previous communications, we are seeking to change the scope of the project and amend TWDB's resolution regarding this project. We are requesting that TWDB initiate this process. We would appreciate it if you would work directly with our consulting engineers – Thomas Hoover, P.E. and William Moriarty, P.E. You can reach them by email at tom.theng@yahoo.com and wmoriarty08@gmail.com. They are authorized to assist you as needed in developing appropriate Amendment language and/or back-up materials, as well as attend any meetings or appearances with TWDB. However, I respectfully request that you please copy me on all communications at dmiller@cityofspringtown.com.

In the coming days, the City of Springtown will initiate the process to augment the State Water Plan to include the new Surface Water Treatment elements. We recognize that modifying the State Water Plan may take several months; we will work diligently to shorten that time frame, if possible. Until the State Water Plan is modified, we will suspend working on the Surface Water elements of the project and focus on those elements currently in the State Water Plan regarding the raw water improvements.

As soon as possible, the City of Springtown will initiate a new application for an additional \$1,300,000 to complete the remainder of the project. We will consider both the SWIFT and Drinking Water State Revolving Fund (DWSRF) Loan programs for these additional funds.

We appreciate your consideration in this matter and thank you in advance for your cooperation in helping the City of Springtown make this adjustment.

Respectfully,


David Miller
City Administrator