P.O. Box 13231, 1700 N. Congress Ave.
Austin, TX 78711-3231, www.twdb.texas.gov
Phone (512) 463-7847, Fax (512) 475-2053

AGENDA ITEM MEMO

BOARD MEETING DATE: October 17, 2024

TO: Board Members

THROUGH: Bryan McMath, 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
David Firgens, Manager, Regional Water Project Development

SUBJECT: Amendment to the Guadalupe-Blanco River Authority Resolution

ACTION REQUESTED

Consider amending by resolution, previously adopted Texas Water Development Board (TWDB) Resolution No. 23-084, to modify the Guadalupe-Blanco River Authority's Clean Water State Revolving Fund commitment to extend the commitment period.

BACKGROUND

In 2023, the TWDB, through Resolution No. 23-084 approved a $12,000,000 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 April 2024 and October 2024. The Authority closed the first series in the amount of $6,000,000 in April 2024 leaving $6,000,000 of the commitment remaining unclosed.

KEY ISSUES

The Authority requests an extension of the expiration date of the remaining $6,000,000 commitment of October 31, 2024. The Authority requests a twelve-month extension to allow the Lake Placid Water Control and Improvement District No. 1 to close on the commitment closer to construction completion. The District has sufficient funds to finance the construction contract, however, the final issuance of the bonds will be sold to cover contingency and any cost overruns. The requested extension would allow the District to close on the funding once these amounts are known.

The project includes improvements and structural modifications to the gates and spillway structure at the Lake Placid dam. Construction of the Lake Placid Dam is currently ongoing and is 55 percent complete with the anticipated final completion scheduled for late August 2025.

RECOMMENDATION

The requested amendment does not change the total amount of financing to the Authority and will allow the Authority to close only on the amount needed to complete the project. The Executive Administrator recommends that TWDB Resolution No. 23-084 be amended to extend the commitment to October 31, 2025, and allow the Authority to close on the remaining funding.

Attachments

1. Resolution (23-)
2. Resolution (23-084)
3. Letter from Lake Placid Water Control and Improvement District No. 1

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 23-084
TO EXTEND THE LOAN COMMITMENT PERIOD FOR THE
$12,000,000 LAKE PLACID WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1
UNLIMITED TAX BONDS,
PROPOSED SERIES 2024 TO BE ISSUED BY
LAKE PLACID WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1

(24 -)

WHEREAS, at its October 5, 2023 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 23-084, made a commitment to provide financial assistance in the amount of $12,000,000 to Lake Placid Water Control and Improvement District No. 1 (District) from the Clean Water State Revolving Fund to finance improvements to its wastewater system to be secured by the TWDB's purchase of $12,000,000 Lake Placid Water Control and Improvement District No. 1 Unlimited Tax Bonds, Proposed Series 2024, for Project No. 73897; and

WHEREAS, on April 23, 2024, the TWDB and the Authority closed on $6,000,000 Lake Placid Water Control and Improvement District No. 1 Unlimited Tax Bonds, Series 2024; and

WHEREAS, pursuant to TWDB Resolution No. 23-084, the commitment period will expire October 31, 2024; and

WHEREAS, the District has submitted a request to extend the TWDB's commitment for an additional twelve (12) months to better align the financing with the project schedule, 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 granting an extension of twelve (12) months is in the public interest.

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 $12,000,000, as authorized in TWDB Resolution No. 23-084, is amended to extend the commitment to October 31, 2025; and

2. all other terms and conditions of TWDB Resolution No. 23-084 shall remain in full force and effect.

APPROVED and ordered of record this the 17th day of October 2024.

TEXAS WATER DEVELOPMENT BOARD

____

Brooke T. Paup, Chairwoman

DATE SIGNED: ________________________

ATTEST:

____

Bryan McMath, Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF $12,000,000 TO THE LAKE PLACID WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 FROM THE CLEAN WATER STATE REVOLVING FUND THROUGH THE PROPOSED PURCHASE OF $12,000,000 LAKE PLACID WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 UNLIMITED TAX BONDS, PROPOSED SERIES 2024

(23-084)

Recitals:

The Lake Placid Water Control and Improvements District No. 1 (District) has filed an application for financial assistance in the amount of $12,000,000 from the Clean Water State Revolving Fund (CWSRF) to finance the construction of certain stormwater system improvements identified as Project No. 73897.

The District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $12,000,000 Lake Placid Water Control and Improvement District No. 1 Unlimited Tax Bonds, Proposed Series 2024 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff.

The TWDB has previously purchased $40,000,000 Guadalupe-Blanco River Authority Contract Revenue Bonds from the Guadalupe-Blanco River Authority for the purpose of planning, designing, and constructing certain stormwater system improvement for Lake Placid identified as Project No. 73897.

The District has offered a pledge of unlimited taxes on all properties within the boundaries of the District as sufficient security for the repayment of the Obligations.

Findings:

1. The revenue or taxes pledged by the District will be sufficient to meet all the Obligations assumed by the District, in accordance with Texas Water Code § 15.607.

2. 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. The term of the Obligations does not exceed the expected useful life of the project proposed by the District.

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

A commitment is made by the TWDB to the Lake Placid Water Control and Improvement District No. 1 for financial assistance in the amount of $12,000,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of $12,000,000 Lake Placid Water Control and Improvement District No. 1 Unlimited Tax Bonds, Proposed Series 2024. This commitment will expire on October 31, 2024.

The commitment is conditioned as follows:

Standard Conditions:

1. The commitment is contingent on a future sale of bonds by the TWDB or on the availability of funds on hand as determined by the TWDB. 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.

2. The commitment is contingent upon the issuance of a written approving opinion of the Attorney General of the State of Texas stating that all the requirements of the laws under which the Obligations are issued have been complied with; that the Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that the Obligations are valid and binding obligations of the District.

3. The commitment is contingent upon the District's compliance with all applicable requirements contained in 31 TAC Chapter 375.

4. The Obligations must provide that the District agrees to comply with all the conditions set forth in the TWDB Resolution.

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 District, 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 District's Obligations, at a minimum and regardless of the amount of the Obligations, must agree to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by the 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 the rule, the continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the District's Obligations, if the TWDB sells or otherwise transfers the Obligations, and the

beneficial owners of the TWDB's bonds if the District is an obligated person with respect to the bonds under SEC Rule 15c2-12.

7. The Obligations must require the District to levy a tax or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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.

8. The Obligations must require the District to use any proceeds from the Obligations that are determined to be remaining unused funds 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 District to submit a final accounting and disposition of any unused funds. Remaining unused funds are those funds unspent after the original approved project is completed.

9. The Obligations must require the District to use any proceeds from the Obligations that are determined to be surplus funds in a manner approved by the Executive Administrator. Surplus funds are funds remaining after completion of the project and completion of a final accounting.

10. The Obligations must provide 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. Proceeds of this commitment are public funds. Therefore, the Obligations must require 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. Proceeds of this commitment must not be used by the District when sampling, testing, removing, or disposing of contaminated soils or media at the project site. The Obligations must provide that the District is solely responsible for liability resulting from acts or omissions of the District, its employees, contractors, or agents arising from the sampling, analysis, transport, storage, treatment, recycling, and disposition of any contaminated sewage sludge, contaminated sediments or contaminated media that may be generated by the District, its contractors, consultants, agents, officials, and employees as a result of activities relating to the Project to the extent permitted by law.

13. Before closing, the District must submit documentation evidencing the adoption and implementation of sufficient system rates and charges or the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements.

14. Before closing, and if not previously provided with the application, the District must 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. Before closing, when any portion of the financial assistance is to be held in escrow or in trust, the District must 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 the District to execute a separate financing agreement in form and substance acceptable to the Executive Administrator.

17. The Obligations must provide that the District must comply with all applicable federal laws and TWDB laws and rules related to the use of the financial assistance.

18. The Obligations must provide that the District 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 require the District to maintain insurance coverage sufficient to protect the TWDB's interest in the project.

20. The Obligations must provide that the District must submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards.

Tax-Exempt Conditions:

21. The District'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 District when rendering this opinion.

22. The District's bond counsel opinion must state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the District when rendering this opinion.

23. The Obligations must prohibit the District from using the financial assistance 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 under section 141 (Regulations).

24. The Obligations must provide that no portion of the proceeds of this financial assistance 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 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 the financial assistance (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 the 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 the deposited 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.

25. The Obligations must require the District to 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 to satisfy the requirements of section 148 of the Code. The Obligations must provide that the District must:

   a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures, and investments) on its books of account separately and apart from all other funds, including receipts, expenditures, and investments, and retain all records of the accounting for at least six years after the final Computation Date. The District may, however, to the extent permitted by law, commingle Gross Proceeds of this financial assistance with other money of the District, provided that the District separately accounts for each receipt and expenditure of the Gross Proceeds and the obligations acquired those proceeds;

   b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to this financial assistance, 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 related rulings. The District must maintain a copy of the calculations for at least six years after the final Computation Date;

   c. as additional consideration for the making of this commitment, and to induce the financial assistance by measures designed to ensure the excludability of the interest on the TWDB's Source Series Bonds from the gross income of the owners for federal income tax purposes, pay to the United States the amount described in paragraph (b) above within 30 days after each Computation Date; and

d. exercise reasonable diligence to assure that no errors are made in the calculations required by paragraph (b) and, if an error is made, to discover and promptly to correct the error within a reasonable amount of time after including payment to the United States of any interest and any penalty required by the Regulations.

26. The Obligations must prohibit the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes.

27. The Obligations must provide that the District will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of section 149(b) of the Code.

28. The transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District's reasonable expectations regarding the use, expenditure, and investment of the proceeds of the Obligations.

29. The Obligations must provide that the District 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.

30. 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.

31. The Obligations must provide that neither the District nor a related party 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 District by the TWDB.

32. Before closing, the District must provide certification that the average weighted maturity of the Obligations purchased by the TWDB does not exceed 120% of the average reasonably expected economic life of the Project.

State Revolving Fund Conditions:

33. The District must submit outlay reports on a quarterly or monthly basis with sufficient documentation on costs in accordance with TWDB outlay report guidelines.

34. The Obligations must provide that all laborers and mechanics employed by contractors and subcontractors for projects 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 District, all contractors, and all sub-contractors must 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 must insert in full in any contract in excess of $2,000 the contract clauses as provided by the TWDB.

35. The Obligations must provide that the District 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 District shall obtain a Unique Entity Identification Number and shall register with System for Award Management (SAM) and maintain current registration at all times during which the Obligations are outstanding.

36. The Obligations must provide that all proceeds of this financial assistance will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and must provide that the District will adhere to the approved project schedule.

37. The Obligations must provide that the District 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 § 375.3, 33 U.S.C. § 1388, and related State Revolving Fund Policy Guidelines.

38. The Obligations must provide that the District must comply 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 in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets.

39. The Obligations must provide that the District shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216.

Clean Water State Revolving Fund Condition:

40. The District must pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant 31 TAC Chapter 375.

Pledge Condition:

41. The Obligations must provide that for each year the Bonds are outstanding, the District will levy a debt service tax rate, and collect taxes sufficient for the repayment of annual principal and interest requirements on the Obligations.

Special Conditions:

42. The District must notify the Executive Administrator in writing, thirty (30) days before taking any actions to alter its legal status in any manner.

43. The Obligations must require that the District notify the Executive Administrator in writing before any action by it 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.

APPROVED and ordered of record this 5th day of October 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup

Brooke T. Paup, Chairwoman

DATE SIGNED: 10/10/23

ATTEST:

A Lavin

Amanda Lavin, Assistant Executive Administrator

Attachment 3

Lake Placid WCID #1
3200 Southwest Freeway, Suite 2600
Houston, TX 77027
713-860-6400 Office

August 13, 2024

Ms. Caaren Skrobarczyk
Texas Water Development Board
1700 N. Congress Ave.
Austin, TX 78701

Re: GBRA (CWSRF #73897)
Lake Placid WCID No. 1 (L1001696)

Dear Ms. Skrobarczyk:

Please consider this letter as a request to extend the time for the District to close on its remaining funds totaling $6,000,000. The District has the amount on-hand to fund the construction contract, however the final issuance will be sold to pay for contingency, cost overruns and excess rain days. The District will not know the amount of these items until the Summer of 2025 when the final issuance will be funded.

Thank you for your consideration and please let me know how we can help.

Sincerely,

Randall T Cox

Randall T. Cox, Secretary

CC: Dain Larson, TWDB
Darrell Nichols, GBRA
Nellie Connally, ABHR