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AGENDA ITEM MEMO

BOARD MEETING DATE: March 13, 2025

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
William Alfaro, Manager, Regional Water Project Development

SUBJECT: Amendment to the East Rio Hondo Water Supply Corporation
Commitment Expiration Date

ACTION REQUESTED

Consider amending by resolution the previously adopted Texas Water Development Board Resolution No. 24-083 to extend the East Rio Hondo Water Supply Corporation's Drinking Water State Revolving Fund commitment to September 30, 2025.

BACKGROUND

In September 2024, the Texas Water Development Board (TWDB) approved a \$18,985,000 commitment to East Rio Hondo Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund (DWSRF) for planning, design, and construction of a water system improvements project. The commitment included \$8,985,000 in financing and \$10,000,000 in principal forgiveness. The commitment is set to expire on March 31, 2025.

KEY ISSUES

The Corporation is requesting an extension to the commitment expiration date because it is still in the process of finalizing a title insurance as part of the TWDB's closing requirements.

In a separate item, the Corporation is also requesting an extension to the commitment for a separate project approved by the TWDB on the same date.

Our Mission	:	Board Members
Leading the state's efforts in ensuring a secure water future for Texas	:	L'Oreal Stepney, P.E., Chairwoman Tonya R. Miller, Board Member
	:	Bryan McMath, Executive Administrator

RECOMMENDATION

The requested amendment does not change the total amount of financial assistance to the Corporation. In order to allow sufficient time for the Corporation to meet all the TWDB's closing requirements and have sufficient time to close on the commitment, the Executive Administrator recommends that the TWDB Resolution 24-083 be amended to extend the commitment expiration to September 30, 2025.

Attachments:

1. Proposed Resolution (25-)
2. Resolution (24-083)
3. Extension Request Letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 24-083
TO EXTEND THE FINANCIAL ASSISTANCE COMMITMENT PERIOD TO
EAST RIO HONDO WATER SUPPLY CORPORATION
(25-)

Recitals:

At its September 12, 2024 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 24-083, made a commitment to provide financial assistance in the amount of \$18,985,000 to the East Rio Hondo Water Supply Corporation (Corporation) from the Drinking Water State Revolving Fund to finance improvements to its water system, through the TWDB's purchase of a Promissory Note in the amount of \$8,985,000 and the execution of a Loan Agreement, and the execution of a Principal Forgiveness Agreement in the amount of \$10,000,000, for Project No. 63009.

Pursuant to TWDB Resolution No. 24-083, the commitment period will expire March 31, 2025.

The Corporation has submitted a request to extend TWDB's commitment for an additional six (6) months to provide the Corporation additional time to satisfy TWDB's closing requirements, all as is more specifically set forth in the recommendations of the TWDB's staff, to which documents express reference is made.

The TWDB hereby finds that granting an extension of six (6) months is reasonable and that the request is in 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 made through TWDB Resolution No. 24-083, is amended to extend the commitment to September 30, 2025.
2. All other terms and conditions of TWDB Resolution No. 24-083 shall remain in full force and effect.

APPROVED and ordered of record this the 13th day of March, 2025.

TEXAS WATER DEVELOPMENT BOARD

L'Oreal Stepney, P.E., 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
\$18,985,000 TO THE EAST RIO HONDO WATER SUPPLY CORPORATION
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF A PROMISSORY NOTE IN
THE AMOUNT OF \$8,985,000 AND EXECUTION OF A LOAN AGREEMENT
AND
\$10,000,000 IN PRINCIPAL FORGIVENESS

(24-083)

Recitals:

The East Rio Hondo Water Supply Corporation (Corporation), located in Cameron County, has filed an application for financial assistance in the amount of \$18,985,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, design, and construction of certain water system improvements identified as Project No. 63009.

The Corporation seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of a Promissory Note in the amount of \$8,985,000 and execution of a Loan Agreement (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of \$10,000,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff.

The Corporation has offered a pledge of system revenues and a mortgaged deed of trust on the Corporation's system as sufficient security for the repayment of the Obligations.

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 § 371.13.

Findings:

1. The revenue or taxes 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. 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. The term of the Obligations does not exceed the expected useful life of the project proposed by the Corporation.
4. The Corporation 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.

5. 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 consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j).
6. The Corporation has completed a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 and filed it with the TWDB in accordance with Texas Water Code § 16.053(j).
7. The Corporation meets the definition of “Disadvantaged Community” in 31 TAC § 371.1(24) and is therefore eligible for principal forgiveness in the amount of \$10,000,000.

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

A commitment is made by the TWDB to the East Rio Hondo Water Supply Corporation for financial assistance in the amount of \$18,985,000 from the Drinking Water State Revolving Fund through the TWDB’s proposed purchase of a Promissory Note in the amount of \$8,985,000 and the execution of a Loan Agreement and the execution of a Principal Forgiveness Agreement in the amount of \$10,000,000. This commitment will expire on March 31, 2025.

The 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 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. Before 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 agrees to comply with all the conditions set forth in the TWDB Resolution.
5. 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 10 years from the date of the first delivery of funds from the TWDB to the Corporation pursuant to this Agreement.

6. 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 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, this 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 the Obligations, and the beneficial owners of the TWDB's bonds if the Corporation is an obligated person with respect to those bonds under SEC Rule 15c2-12.
7. The Obligations must contain a provision requiring the Corporation 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 include a provision requiring the Corporation to use any financial assistance 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 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.
9. The Obligations must include a provision requiring the Corporation to use any financial assistance proceeds from the Obligations 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 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. Proceeds of this commitment are public funds. Therefore, 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. Proceeds of this commitment must not be used by the Corporation when sampling, testing, removing, or disposing of contaminated soils or media at the project site, except for an LSLR project or associated activity directly connected to the identification, planning, design, and replacement of lead service lines OR for an EC project to address PFAs or any contaminant listed on EPA's Contaminant Candidate Lists. The Obligations must include an environmental indemnification provision

wherein the Corporation agrees, and agrees to cause its construction contractors, to indemnify, hold harmless and protect the TWDB from any and all claims, causes of action, or damages arising from activities performed by the Corporation or its construction contractors, including their officials and employees, in connection with the project, to the extent permitted by law.

13. Before closing, the Corporation shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements.
14. Before 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, 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 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.
16. The Executive Administrator may require the Corporation to execute a separate financing agreement in form and substance acceptable to the Executive Administrator.
17. The TWDB retains the option to purchase the Obligations in separate lots 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.
18. The Obligations must provide that the Corporation will comply with all applicable TWDB laws and rules related to the use of the financial assistance.
19. The Obligations must provide that the Corporation 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.
20. The Obligations must contain a provision requiring the Corporation to maintain insurance coverage sufficient to protect the TWDB's interest in the project.
21. The Obligations must provide that the Corporation will submit annually an audit prepared by a certified public accountant in accordance with generally accepted auditing standards.

State Revolving Fund Conditions:

22. The Corporation shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines.
23. 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 the financial assistance made available shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB.
24. 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 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.
25. The Obligations shall provide that all financial assistance proceeds will be timely and expeditiously used, as required by 40 CFR § 35.3135(d), and shall provide that the Corporation will adhere to the approved project schedule.
26. 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.
27. The Obligations or Principal Forgiveness Agreement must contain a covenant that the Corporation shall abide by the prohibition on certain telecommunications and video surveillance services or equipment as required by 2 CFR § 200.216.
28. The Obligations and Principal Forgiveness Agreement must contain a covenant that the Corporation will abide by all applicable requirements related to the Build America, Buy America Act, Public Law 117-58 and 2 CFR part 184.

Drinking Water State Revolving Fund Conditions;

29. The Corporation shall pay at closing an origination fee approved by the Executive Administrator of the TWDB pursuant to 31 TAC Chapter 371.
30. Before 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.

31. Before the 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:

32. 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.
33. 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.
34. 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.
35. Before 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.
36. Before 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.

37. Before the 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.
38. Before 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.
39. Before 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.
40. 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:

41. The Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements of the Obligations and the annual debt service requirement of all additional debt, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations.
42. If the Corporation has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any financial assistance made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB must be at least on a parity with lien or liens securing the outstanding obligations.
43. 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 of the Obligations and the annual debt service requirement of all additional debt after giving effect to the additional obligations when net revenues are a) 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; or b) the Corporation certifies that the Corporation is expected to continue to meet or exceed the net system revenue test with a minimum coverage of 1.25 times the average annual debt service requirement. An authorized representative of the Corporation must provide the calculations, identifying reasonable assumptions, in a manner and format that is acceptable to the Executive Administrator.

Special Conditions:

44. Before the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the Corporation 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 a finding will be made before the release of funds for construction.
45. Before 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 Corporation has the right to use the water that the project financed by the TWDB will provide.
46. The Corporation must notify the Executive Administrator in writing, thirty (30) days before taking any actions to alter its legal status in any manner.
47. The Obligations must include a provision requiring that the Corporation 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.
48. Before closing, the Corporation shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator.
49. 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.

APPROVED and ordered of record this 12th day of September 2024.

TEXAS WATER DEVELOPMENT BOARD



Brooke T. Paup, Chairwoman

DATE SIGNED: 9/17/24

ATTEST:



Bryan McMath, Executive Administrator

East Rio Hondo Water Supply Corporation

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January 30, 2025

William Alfaro
Manager, South Region
Regional Water Project Development
Water Supply & Infrastructure
Texas Water Development Board
P.O. Box 13231
Austin, TX 78711

Delivered via email to:

William.Alfaro@twdb.texas.gov

Re: Texas Water Development Board (TWDB) Project No.'s 63009 and 63010
Financial Assistance Commitment Extension Request

Dear Mr. Alfaro:

With regard to the TWDB Project No.'s 63009 and 63010, please allow this correspondence to serve as ERHWSC's formal request to extend the current financial assistance commitment deadline of March 31, 2025. While ERHWSC is optimistic that we can be ready to close prior to the current deadline, ERHWSC believes it would be prudent to seek an extension. Even though ERHWSC continues to make progress, we want to ensure we have sufficient time to satisfy all of the closing requirements. As such, ERHWSC respectfully requests that the TWDB consider extending the current deadline six months from March 31, 2025 to September 30, 2025.

We truly appreciate your consideration and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "B. E. Macmanus", followed by a long horizontal line extending to the right.

Brian E. Macmanus, P.E.
General Manager