

## AFFIRMATION OF COMMITMENT

**BOARD DATE:** December 1, 2015

**LOAN RECIPIENT:** Zavala County Water Control & Improvement District No.1 (62540)

**ACTION REQUESTED:** Affirm by resolution the commitment made in TWDB Resolution No. 13-17 with the addition of conditions listed in the Mitigative Measures section of this memorandum.

**Project Name:** Water Improvements Project Phase 2

**Funding Elements:** ☒ Planning ☐ Acquisition ☒ Design ☐ Construction

**Benefits:** The proposed project will improve La Pryor's water distribution system providing a reliable water supply with adequate water pressure. The project will address issues of water outages for the residents and for the La Pryor Independent School District. Overall the project will contribute to improve the quality of life for the community of La Pryor.

**Key Issues:** None.

**Environmental Determination Type:** Finding of No Significant Impact

**Date Issued:** October 21, 2015

**Project Elements Covered:**

1. Installing approximately 1,500 linear feet of 12-inch bore construction with 12-inch steel casting;
2. Abandoning existing undersized and aging water lines and replacing with 6-inch PVC; and,
3. Installing 6-inch water line for fire protection looping and installation of 62 fire hydrants.

### Our Mission : Board Members

To provide leadership, information, education, and support for planning, financial assistance, and outreach for the conservation and responsible development of water for Texas

: Bech Bruun, Chairman | Kathleen Jackson, Member  
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: Kevin Patteson, Executive Administrator

- Mitigative Measures:
1. Complete coordination with the U.S. Army Corps of Engineers (USACE) and, if necessary, obtain and comply with any USACE Permit;
  2. To assure compliance with the Migratory Bird Treaty Act, if clearing trees or other vegetation is necessary these activities shall occur outside of the April 1 through July 15 migratory bird season. Contractors should be made aware of the potential of encountering migratory birds either nesting or wintering and be instructed to avoid negatively impacting them. If vegetation clearing must be scheduled to occur during the nesting season, the vegetation to be impacted should be surveyed for active nests by a qualified biologist. If active nests are observed during surveys, a 150-foot buffer of vegetation remain around the nests until the young have fledged or the nest is abandoned;
  3. Standard emergency discovery condition for cultural resources; and,
  4. Standard emergency discovery condition for threatened and endangered species.

Environmental Finding includes all project components? ☐ Yes ☒ No

Additional review required for other project components? ☐ Yes ☒ No

Previous Findings issued? ☒ Yes ☐ No

TWDB FINANCIAL ASSISTANCE RELATED TO THIS PROJECT

| Number    | Program                             | Commitment |
|-----------|-------------------------------------|------------|
| L1000337  | Drinking Water State Revolving Fund | \$760,000  |
| LF1000370 | Drinking Water State Revolving Fund | \$738,785  |

Attachment: (1) Resolution No. (15- )  
(2) Resolution No. (13-17)

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A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
AFFIRMING ENVIRONMENTAL FINDINGS RELATING TO  
TWDB RESOLUTION NO. 13-17 AND LOAN COMMITMENT  
TO THE ZAVALA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1

(15- \_\_ )

WHEREAS, at its January 31, 2013 meeting, the Texas Water Development Board (TWDB), by Resolution No. 13-17, made a commitment to provide financial assistance in the amount of \$1,498,785 to Zavala County Water Control and Improvement District No. 1 (District), Texas, from the Drinking Water State Revolving Fund, for the purpose of financing the wastewater system improvements identified as Project No. 62540 (Project); and

WHEREAS, pursuant to 31 Texas Administrative Code (TAC) § 371.72 and based on preliminary environmental data provided by the District, the TWDB may release funds for design after receiving a favorable recommendation from its Executive Administrator that there appear to be no significant environmental impacts anticipated from the Project; and

WHEREAS, pursuant to 31 TAC Chapter 371, Subchapter E, funds for the design of the Project may not be released until an environmental review has been completed; and

WHEREAS, the Executive Administrator has informed the TWDB of the issuance of a Finding of No Significant Impact (FNSI) for the Project on October 21, 2015, such finding being subject to the following conditions including the standard emergency discovery conditions for threatened and endangered species and cultural resources in Project contract documents.

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

1. the TWDB concurs in the environmental finding made by the Executive Administrator and affirms the commitment made to the District in TWDB Resolution No. 13-17; and
2. the TWDB approves the release of funds for design of the project from the Drinking Water State Revolving Fund loan to the District for proposed improvements to the District's wastewater treatment system, after all other appropriate conditions of TWDB Resolution No. 13-17 have been met.

PROVIDED, however, such commitments and TWDB resolution are further conditioned as follows:

1. the District must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources as more fully specified in the final environmental finding of the Executive Administrator;
2. the District must complete coordination with the U.S. Army Corps of Engineers (USACE) and, if necessary, obtain and comply with any USACE Permit;

3. the District will ensure compliance with the Migratory Bird Treaty Act by clearing trees or other vegetation outside of the April 1 through July 15 migratory bird season. Contractors should be made aware of the potential of encountering migratory birds either nesting or wintering and be instructed to avoid negatively impacting them. If vegetation clearing must be scheduled to occur during the nesting season, the vegetation to be impacted should be surveyed for active nests by a qualified biologist. If active nests are observed during surveys, a 150-foot buffer of vegetation remain around the nests until the young have fledged or the nest is abandoned; and
4. all other terms and conditions in TWDB Resolution No. 13-17 shall remain in full force and effect.

APPROVED and ordered of record this 1<sup>st</sup> day of December, 2015.

TEXAS WATER DEVELOPMENT BOARD

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Bech K. Bruun, Chairman

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

ATTEST:

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Kevin Patteson  
Executive Administrator

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE  
IN A TOTAL AMOUNT OF \$1,498,785 TO  
ZAVALA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$760,000 ZAVALA COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1  
WATER AND SEWER REVENUE BONDS, PROPOSED SERIES 2013  
AND  
\$738,785 IN LOAN FORGIVENESS

(13-17)

WHEREAS, Zavala County Water Control and Improvement District No. 1, located in Zavala County, Texas, (the "*District*"), has filed an application seeking financial assistance in the amount of \$1,498,785 from the Drinking Water State Revolving Fund ("*DWSRF*") to finance certain water system improvements identified as TWDB Project No. 62540; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (the "*TWDB*") through the TWDB's proposed purchase of \$760,000 Zavala County Water Control and Improvement District No. 1 Water and Sewer Revenue Bonds, Proposed Series 2013 and through the execution of a Loan Forgiveness Agreement in an amount of \$738,785 (together with all authorizing documents, the "*Obligations*"), all as is more specifically set forth in the application and in recommendations of the TWDB's staff, to which documents express reference is made; and

WHEREAS, the District has offered a lien on net system revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that in its opinion the revenues 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. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§300f *et seq.* (1974), as amended, as well as state law, in accordance with Texas Water Code §15.607;
3. that the District has adopted and is implementing 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 the TWDB's rules, in accordance with Texas Water Code §15.607;
4. that the current water audit required by Texas Water Code §16.0121, has been completed by the District and filed with the TWDB if the District is a retail public utility providing potable water, in accordance with Texas Water Code §16.053(j);

5. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code §16.053(j);
6. that the District meets the definition of "Disadvantaged Community" set forth in Texas Water Code §15.602(5), and 31 TAC §371.1(23) of the TWDB's rules and is therefore eligible for subsidy through the DWSRF; and
7. that the Executive Administrator issued a Categorical Exclusion on December 4, 2012, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The Board concurs with the environmental finding issued by the Executive Administrator.

NOW, THEREFORE, based on these considerations and findings, the Texas Water Development Board resolves as follows:

A commitment is made by the TWDB to Zavala County Water Control and Improvement District No. 1 for financial assistance in the total amount of \$1,498,785 from the Drinking Water State Revolving Fund through the TWDB's purchase of \$760,000 Zavala County Water Control and Improvement District No. 1 Water and Sewer Revenue Bonds, Proposed Series 2013 and through the execution of a Loan Forgiveness Agreement by and between the District and the TWDB in an amount of \$738,785. This commitment will expire on January 31, 2014.

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 District;
3. this commitment is contingent upon the District's compliance with all applicable requirements contained in the rules and regulations of the TWDB;
4. the Obligations must provide that the Obligations can be called for early redemption only in inverse order of maturity, and 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;
5. 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 or obligated persons, will, at a minimum, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission ("*SEC*") 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 District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring the District to levy a tax and/or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
7. the Obligations must include a provision requiring the District 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) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. 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;
9. 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, Chapter 2256, Government Code, (the "*PPIA*"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "*PFCA*");
10. loan proceeds shall not be used by the District 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 District 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 District, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
11. the Obligations must include a provision requiring that, prior to any action by the District 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. The District must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by conversion to a conservation and reclamation district or a sale-transfer-merger with another retail public utility;

12. prior to closing, the District shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
13. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, the District shall submit an executed engineering contract as appropriate for the project scope of work, and an executed financial advisor contract and executed bond counsel contract as appropriate for the work to be performed in obtaining the TWDB's financial assistance for the project, in a form and substance that are satisfactory to the TWDB's Executive Administrator. Fees to be reimbursed under any consulting contract must be reasonable in relation to the services performed, must be reflected in the contract, and must be acceptable to the Executive Administrator;
14. prior to closing, when any portion of loan proceeds are to be held in escrow, the District shall execute an escrow agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
15. the Executive Administrator of the TWDB may require that the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
16. should one or more of the provisions in this resolution be held to be null, void, voidable or, for any reason whatsoever, of no force and effect, such provision(s) shall be construed as severable from the remainder of this resolution and shall not affect the validity of all other provisions of this resolution which shall remain in full force and effect;

#### Conditions related to Tax-Exempt Status

17. 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;
18. the District'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 District when rendering this opinion;
19. the Obligations must include a provision prohibiting the District from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds";
20. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments 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 (reduced by the period of investment by the TWDB) 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 IRS 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 Loan, 125% of average annual debt service on the Loan, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Loan;
21. the Obligations must include a provision requiring the District to restrict the use of the proceeds of the Loan (or amounts within the control of the District that are treated as funds from the Bonds) or to pay rebate to the United States in order to satisfy the requirements of §148 of the Internal Revenue Code of 1986 (relating to arbitrage). The Obligations must provide that the District shall:
  - a. account for all Gross Proceeds (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 District may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the District, provided that the District separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount 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 District 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;
22. the Obligations must include a provision prohibiting 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;

23. 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 §149(b) of the Internal Revenue Code;
24. 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;
25. the transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, a 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;
26. the Obligations must provide that the District will not acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Obligations to be acquired from such District by the TWDB;

#### State Revolving Fund Conditions

27. the District shall submit outlay reports with sufficient documentation on costs (e.g., invoices, receipts) on a quarterly or monthly basis in accordance with the TWDB's outlay report guidelines;
28. 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 recipient, all contractors, and all sub-contractors shall ensure that all project contracts mandate compliance with Davis-Bacon;
29. the Obligations and Loan Forgiveness Agreement must include a provision stating 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. The District shall obtain a Data Universal Numbering System (“DUNS”) Number and shall register with the System for Awards Management (“SAM”), and maintain current registration at all times during which the Obligations are outstanding;
30. the Obligations shall provide that all loan proceeds will be timely and expeditiously used, as required by federal statute and EPA regulations, and also shall provide that the District will adhere to an Executive Administrator-approved project schedule, which shall not be altered except for good cause shown and only with the written approval of the Executive Administrator;

### Drinking Water State Revolving Fund Conditions

31. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the TWDB's Executive Administrator;
32. prior to or at closing on either the entire amount or the first installment delivery of these Obligations, the District shall pay a 2.25% origination fee to the TWDB calculated pursuant to TWDB rules;
33. prior to closing, the Texas Commission on Environmental Quality, ("TCEQ"), must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the District 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;
34. prior to release of funds for goods or professional services, the District must provide documentation that it has met the procurement requirements under the Disadvantaged Business Enterprises Program;

### Pledge Conditions for the Loan

35. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
36. if the District has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations; and
37. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if an independent certified public accountant or independent firm of certified public accountants, acting by and through a certified public accountant, signs a written certificate to the effect that, in his or its opinion, during either the last complete fiscal year, or any twelve consecutive calendar month period ending not later than ninety (90) days preceding the month in which the resolution authorizing the issuance of the then proposed additional bonds is passed, the net system revenues were at least 1.25 times the average annual principal and interest requirements of all bonds which are scheduled to be outstanding after the delivery of the then proposed additional bonds. It is specifically provided, however, that in calculating the amount of net system revenues for this purpose, if there has been any increase in the rates or charges for services of the system which are then in effect and which have been in effect for at least 60 days prior to the month in which the resolution authorizing the issuance of the proposed additional bonds is passed, but where were not in effect during all of the entire period for which the pledged revenues are being calculated, then the certified public accountant shall determine and certify the amount of net system revenues as being the total of (i) the actual net system revenues for the


entire period plus (ii) a sum equal to the aggregate amount by which the actual billings to customers of the system during the entire period would have been increased if such increased rates or charges had been in effect during the entire period.

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

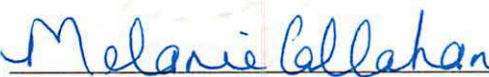
38. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to all of the TWDB's rules relating to such funding option;
39. the District will provide the TWDB with such additional information, reports, statements and certificates with respect to the Obligations that the TWDB may from time to time reasonably request;
40. the Loan Forgiveness Agreement must include a provision stating that the District shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the EA; and
41. the District must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 31<sup>st</sup> day of January, 2013.

TEXAS WATER DEVELOPMENT BOARD

  
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Billy R. Bradford, Jr., Chairman

ATTEST:

  
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Melanie Callahan  
Executive Administrator