

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT TWDB
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
FROM THE WATER INFRASTRUCTURE FUND THROUGH THE PROPOSED PURCHASE
OF \$24,550,000 CITY OF SAN ANTONIO, TEXAS JUNIOR LIEN REVENUE BONDS,
SERIES 2011

(10-128)

WHEREAS, San Antonio Water System, acting on behalf of the City of San Antonio, Texas, ("SAWS"), has filed an application for financial assistance in the amount of \$24,550,000 from the Water Infrastructure Fund ("WIF") in accordance with §§15.973 and 15.974, Water Code, to finance certain water supply project(s) including, but not necessarily limited to, a brackish groundwater project in Bexar and Wilson counties; and

WHEREAS, SAWS seeks financial assistance from the Texas Water Development Board (the "TWDB") through the TWDB's proposed purchase of \$24,550,000 City of San Antonio, Texas Junior Lien Revenue Bonds, Proposed Series 2011, (the "Obligations"), as is more specifically set forth in the application and in recommendations of the TWDB's Project Finance and Construction Assistance staff, to which documents express reference is made; and

WHEREAS, in accordance with §15.975, Water Code, the TWDB hereby finds:

1. that the revenue pledged by SAWS will be sufficient to meet the all of the Obligations assumed by SAWS;
2. that the project is a recommended water management strategy in a TWDB-approved regional water plan adopted pursuant to §16.053, Water Code, and/or in the State Water Plan adopted in accordance with §16.051, Water Code;
3. that the project will meet water needs in a manner consistent with the state and regional water plans as required by §16.053(j), Water Code;
4. that the application and financial assistance requested meet the requirements of Chapter 15, Subchapter Q and Chapter 17, Subchapter E, Water Code, and the TWDB's rules set forth in 31 Tex. Admin. Code (TAC) Chapter 363, Subchapters A and L; and
5. that SAWS 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.

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

A commitment is made by the TWDB to San Antonio Water System, acting on behalf of the City of San Antonio, Texas for financial assistance in the amount of \$24,550,000

from the Water Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$24,550,000 City of San Antonio, Texas Junior Lien Revenue Bonds, Proposed Series 2011. This commitment will expire on December 31, 2011

Such commitment is conditioned as follows:

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 issuer;
3. this commitment is contingent upon SAWS's compliance with all applicable requirements contained in the rules, regulations and policies of the TWDB;
4. SAWS's bond counsel opinion must include an opinion 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 SAWS when rendering this opinion;
5. SAWS's bond counsel opinion must include an opinion that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the issuer when rendering this opinion;
6. the ordinance/resolution authorizing the issuance of these Obligations, (hereinafter referred to as the "*Authorizing Document*"), must include a provision prohibiting SAWS from using the proceeds of this loan in a manner that would cause the Obligations to become "private activity bonds";
7. the Authorizing Document must include that the issuer will comply with the provisions of §148 of the Internal Revenue Code of 1986 (relating to arbitrage);
8. the Authorizing Document must include a provision requiring SAWS to make any required rebate to the United States of arbitrage earnings;
9. the Authorizing Document must include a provision prohibiting SAWS from taking any action that would cause the interest on the Obligations to be includable as gross income for federal income tax purposes;
10. the Authorizing Document must provide that SAWS 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;

11. the bond transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth SAWS's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
12. the bond transcript must include evidence that the information reporting requirements of §149(e) of the Internal Revenue Code of 1986 will be satisfied. This requirement is currently satisfied by filing IRS Form 8038 with the Internal Revenue Service. A completed copy of IRS Form 8038 must be provided to the Executive Administrator of the TWDB prior to the release of funds;
13. the Authorizing Document must state that 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;
14. SAWS, 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 SAWS'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 owner of SAWS's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if SAWS is an obligated person with respect to such bonds under SEC Rule 15c2-12;
15. if there are existing Obligations of SAWS outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the TWDB's loan shall be at least on a parity with lien or liens securing such outstanding debt;
16. the Authorizing Document must contain a provision that SAWS will at all times levy a tax and/or maintain and collect sufficient rates and charges to produce net system revenues in an amount necessary to meet the debt service requirements of all outstanding bonds and to maintain the funds established and required by this ordinance;
17. prior to closing, SAWS must 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 system debt service requirements;
18. the Authorizing Document must include a provision requiring the District to use any surplus proceeds from the Obligations 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 capitalized interest or principal on the obligations owned by the Board; or (3) eligible project costs as authorized by the Executive Administrator;

19. the Executive Administrator of the TWDB may require that SAWS execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
20. loan proceeds are public funds and, as such, these proceeds shall be held in escrow or in trust 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 "PFLA"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "PFCA").
21. prior to closing, SAWS shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed form to the TWDB when any portion of loan proceeds are to be held in escrow or in trust;
22. if a bond insurance policy or surety policy in lieu of a cash reserve are utilized:
 - (a) thirty (30) days before closing, SAWS shall submit a draft of the policy to the TWDB's Executive Administrator for a determination on whether the policy provides appropriate security in accordance with TWDB policies;
 - (b) prior to closing, SAWS shall provide the executed underlying documents of the policy (e.g. commitment letter, specimen policy) in a form and substance that is satisfactory to the TWDB's Executive Administrator; and
 - (c) prior to closing, the Attorney General of the State of Texas must have considered the use of said policy as a part of its approval of the proposed bond issue.
23. prior to closing, and if not previously provided with the application, SAWS shall submit an executed engineering contract for design and construction, an executed financial advisor contract, and an executed bond counsel contract in a form and substance that are satisfactory to the TWDB's Executive Administrator;
24. loan proceeds shall not be used by SAWS when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Authorizing Document shall include an environmental indemnification provision wherein SAWS 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 SAWS, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
25. 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.

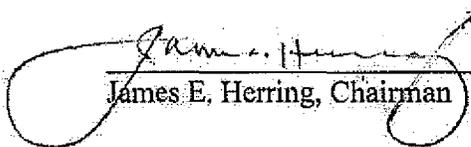
PROVIDED, however, the Authorizing Document is subject to the following special conditions:

26. this the loan is approved for funding under the TWDB's pre-design funding option, as specified in 31 TAC §363.1206 of the TWDB's rules, and initial and future releases of funds are subject to all of the TWDB's rules relating to such funding option;
27. the Authorizing Document must require the accumulation of a reserve fund of no less than average annual debt service payments, to be accumulated in equal monthly installments over the sixty-month period following the issuance of the Obligations;
28. the Authorizing Document must contain a provision stating that:
 - (a) with respect to additional revenue bonds that are insured, no additional bonds shall be issued unless net system revenues for the last completed fiscal year or a 12-month consecutive calendar month period ending no more than 90 days preceding the adoption of the additional bonds ordinance have been no less than 1.00 times the average annual debt service payments after giving effect to the additional bonds;
 - (b) with respect to additional revenue bonds that are not insured and that are sold to the TWDB, no additional bonds shall be issued unless net system revenues for the last completed fiscal year or a 12-month consecutive calendar month period ending no more than 90 days preceding the adoption of the additional bonds ordinance have been no less than 1.25 times the average annual debt service payments after giving effect to the additional bonds; and
 - (c) with respect to additional revenue bonds that are not insured and that are sold to any entity other than the TWDB, no additional bonds shall be issued unless net system revenues for the last completed fiscal year or a 12-month consecutive calendar month period ending no more than 90 days preceding the adoption of the additional bonds ordinance have been no less than 1.00 times the average annual debt service payments after giving effect to the additional bonds;
29. the Authorizing Document must contain a covenant that SAWS will apply for and obtain all permits, licenses, letter authorizations, notifications of solid waste registration, notices of intent and other regulatory approvals that may be required by those federal, state, regional and local governmental entities responsible for regulating environmental, health and safety and transportation-related matters arising from or pertaining to the generation, management and disposal of municipal solid wastes, radioactive substances and low-level radioactive wastes that are generated as the result of the planning, design and construction of this desalination project including, but not necessarily limited to, surface water discharge permit(s), storm water permits, underground injection control permits, solid waste facility registrations, notifications and/or permits, hazardous waste permits, radioactive materials management licenses, and low-level radioactive waste permits, registrations and exemptions;

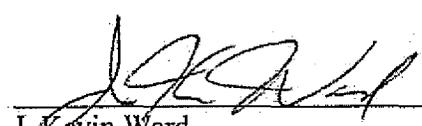
30. prior to the release of funds for land acquisition, a favorable environmental determination must be issued by the Executive Administrator;
31. prior to the release of construction funds, evidence must be submitted to the Executive Administrator showing that all permits, licenses, registrations, notices of intent, notifications and other legal authorizations required by federal, state, regional (e.g. underground water conservation districts, river authorities) or local governmental entities required for the construction and operation of this project have been issued in final form by the pertinent regulatory agency that authorizes these activities; and
32. prior to the release of construction funds for that portion of a project that proposes groundwater development, the Executive Administrator must issue a written finding that SAWS has the right to appropriate and use the water required by the project being financed by the TWDB in accordance with §15.975(c), Water Code.

APPROVED and ordered of record this, the 16th day of December, 2010.

TEXAS WATER DEVELOPMENT BOARD


James E. Herring, Chairman

ATTEST:


J. Kevin Ward
Executive Administrator