

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE FILED BY SAN
ANTONIO WATER SYSTEM, ACTING ON BEHALF OF THE CITY OF SAN ANTONIO,
FROM THE WATER INFRASTRUCTURE FUND THROUGH THE PROPOSED PURCHASE
OF \$50,000,000 CITY OF SAN ANTONIO, TEXAS WATER SYSTEM JUNIOR LIEN
REVENUE BONDS, PROPOSED SERIES 2013**

(12-102)

WHEREAS, San Antonio Water System, acting on behalf of the City of San Antonio, located in Bexar County, Texas, ("SAWS"), has filed an application for financial assistance in the amount of \$50,000,000 from the Water Infrastructure Fund ("WIF") in accordance with §§15.973 and 15.974, Water Code, to finance the construction of a brackish groundwater desalination water supply project identified as Project No. 21642; and

WHEREAS, SAWS seeks financial assistance from the Texas Water Development Board (the "TWDB") through the TWDB's proposed purchase of \$50,000,000 City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Proposed Series 2013, (the "Obligations"), 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, in accordance with §15.975, Water Code, the TWDB hereby finds:

1. that the revenues pledged by SAWS will be sufficient to meet the all of the Obligations assumed by the 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;
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; and
6. that the current water audit required by §16.0121, Water Code, has been completed by the City and filed with the TWDB if SAWS is a retail public utility providing potable water to the community.

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

A commitment is made by the TWDB to the San Antonio Water System, acting on behalf of the City of San Antonio for financial assistance in the amount of \$50,000,000 from the Water Infrastructure Fund, to be evidenced by the TWDB's proposed purchase of \$50,000,000 City of San Antonio, Texas Water System Junior Lien Revenue Bonds, Proposed Series 2013. This commitment will expire on October 31, 2013.

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 SAWS;
3. this commitment is contingent upon SAWS's compliance with all applicable requirements contained in the rules, regulations and policies 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. 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 owners of the 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;
6. the Obligations must contain a provision requiring SAWS 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 SAWS 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 "PFIA"), and the Public Funds Collateral Act, Chapter 2257, Government Code, (the "PFCA");
10. loan proceeds shall not be used by SAWS when sampling, testing, removing or disposing of injection well fluids, brine concentrate, municipal solid wastes, soils and/or media contaminated with hazardous substances or for managing and disposing of other hazardous substances including, but not limited to, radioactive substances and low-level radioactive wastes that may be generated at the project site(s) during construction activities.
11. the Obligations 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 hazardous substance, radioactive substance and/or solid waste, as these terms are defined in the Texas Solid Waste Disposal Act, TEX. HEALTH & SAFETY CODE Ann. Chapter 361, as amended, and the Radiation Control Act, TEX. HEALTH & SAFETY CODE ANN. Chapter 401, as amended, 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;
12. the Obligations must include a provision requiring that, prior to any action by the SAWS 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. SAWS 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;
13. prior to closing, SAWS 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;

14. prior to closing, and if required under the TWDB's financial assistance program and not previously provided with the application, SAWS 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;
15. if a bond insurance policy or a surety policy in lieu of a cash reserve is 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;
 - 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; and
 - d. after loan closing, SAWS shall notify the Executive Administrator no less than 30 days prior to converting from a cash reserve fund to a surety policy. Such a conversion may only be made if the proposed insurer or surety meets the financial guarantees established in the TWDB's rules and has satisfied the above requirements;
16. prior to closing, when any portion of loan proceeds are to be held in escrow or in trust, SAWS shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
17. the Executive Administrator of the TWDB may require that SAWS execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
18. 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

19. SAWS'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 SAWS when rendering this opinion;

20. SAWS's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of SAWS when rendering this opinion;
21. the Obligations 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";
22. 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;
23. the Obligations must include a provision requiring SAWS to restrict the use of the proceeds of the Loan (or amounts within the control of SAWS 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 SAWS 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. SAWS may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of SAWS, provided that SAWS 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, section

1.148-3 of the Regulations, and the rulings thereunder. SAWS 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;
- 24. the Obligations must include a provision prohibiting SAWS from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 25. the Obligations 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;
 - 26. the 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;
 - 27. 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. A completed copy of IRS Form 8038 must be provided to the Executive Administrator prior to the release of funds;
 - 28. the Obligations must provide that SAWS 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 SAWS by the TWDB;

Pledge Conditions For The Loan

- 29. 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;
- 30. if SAWS 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;

31. the Obligations must contain a provision 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 shall have been not 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 shall have been not 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 shall have been not less than **1.00** times the average annual debt service payments after giving effect to the additional bonds.

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

32. the Obligations 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, recycling and disposal of all municipal solid wastes, radioactive substances and low-level radioactive wastes that may be generated as the result of construction activities at the project site(s) including, but not necessarily limited to, surface water discharge permits, stormwater 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;
33. prior to the release of funds for construction activities, evidence must be submitted to the TWDB showing that all permits, licenses, registrations, notices of intent, notifications and other regulatory authorizations required by federal, state, regional (e.g. groundwater 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; and

34. prior to the release of construction funds for that portion of the project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that SAWS has the right to use the water that the project financed by the TWDB will provide.

APPROVED and ordered of record this, the 17th day of October, 2012.

TEXAS WATER DEVELOPMENT BOARD



Billy R. Bradford, Jr., Chairman

ATTEST:



Melanie Callahan
Executive Administrator