

AGENDA ITEM MEMO

BOARD ITEM DATE: January 6, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator, Water Supply & Infrastructure

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Joe Koen, Manager, Regional Water Project Development

SUBJECT: West Wise Special Utility District Request to Extend the Scope

ACTION REQUESTED

Approve by resolution a request from the West Wise Special Utility District (District) to extend Texas Water Development Board Resolution No. 17-015 scope of work to include the design and construction of an elevated storage tank.

BACKGROUND

In February 2017, the Texas Water Development Board (TWDB), through Resolution 17-015, approved a commitment from the Drinking Water State Revolving Fund (DWSRF) in the amount of \$13,430,000 to West Wise Special Utility District (District) for planning, acquisition, design and construction of water system improvements that included a surface water intake, pump station, 12-inch water line, automatic meter reading system, and a new surface water treatment plant. This project allows the District to comply with a TCEQ Agreed Order.

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

KEY ISSUES

The District closed on the commitment in January 2018. Planning for the project was approved by TWDB in September 2019, and pilot testing of the chlorine dioxide treatment system was approved by TCEQ in August 2019. TWDB approved the design of the new surface water treatment plant in February 2020. Bids for the project came in significantly higher than available commitment funds. The District has coordinated with United States Department of Agriculture (USDA) to secure alternative funding for construction of the surface water treatment plant. As a condition of the funding, USDA has prohibited the commingling of funds. DWSRF funds will be utilized for design changes and engineering construction and inspection services associated with the surface water treatment plant.

The District has requested that funds originally designated for construction of the surface water treatment plant be repurposed for the design and construction of an elevated storage tank. This will allow the District to address pressure issues within their system, and maintain TCEQ elevated storage requirements, based on projected needs.

RECOMMENDATION

The Executive Administrator recommends amending TWDB Resolution No. 17-015 to include design and construction of a new elevated storage tank. This will allow the District to obtain funding for construction of the surface water treatment plant through USDA and allow the District to address water pressure issues within their system.

Attachment(s):

1. Resolution (22-)
2. Resolution (17-015)
3. City's request letter

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TWDB RESOLUTION NO. 17-015
TO EXTEND THE PROJECT SCOPE FOR THE \$13,430,000
WEST WISE SPECIAL UTILITY DISTRICT REVENUE BONDS, PROPOSED SERIES 2017

(22 -)

WHEREAS, at its February 10, 2017 meeting, the Texas Water Development Board (TWDB), by TWDB Resolution No. 17-015, made a commitment to provide financial assistance in the amount of \$13,430,000 to West Wise Special Utility District (District) from the Drinking Water State Revolving Fund, to finance improvements to its water system, to be secured by the TWDB’s purchase of \$13,430,000 West Wise Special Utility District Revenue Bonds, Proposed Series 2017, for Project No. 62730; and

WHEREAS, by letter dated October 14, 2021, the District seeks an amendment to TWDB Resolution 17-015 by modifying the scope for the TWDB Project No. 62730 to include the design and construction of an elevated storage tank, all as is more specifically set forth in the recommendations of the TWDB’s staff, to which documents express reference is made; and

WHEREAS, the TWDB hereby finds that the amendment to the scope for the TWDB Project No. 62730 is reasonable and that the request is in the public interest and will serve a public purpose; and

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

1. the scope of the TWDB Project No. 62730, as authorized in TWDB Resolution No. 17-015, is amended to include the design and construction of an elevated storage tank.
2. All other terms and conditions of TWDB Resolution No. 17-015 shall remain in full force and effect.

APPROVED and ordered of record this the 6th day of January, 2022.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$13,430,000 TO WEST WISE SPECIAL UTILITY DISTRICT
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
\$13,430,000 WEST WISE SPECIAL UTILITY DISTRICT REVENUE BONDS,
PROPOSED SERIES 2017**

(17-015)

WHEREAS, the West Wise Special Utility District (District) has filed an application for financial assistance in the amount of \$13,430,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design and construction of certain water system improvements identified as Project No. 62730; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$13,430,000 West Wise Special Utility District Revenue Bonds, Proposed Series 2017 (together with all authorizing documents "Obligations"), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

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

WHEREAS, 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; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the District will be sufficient to meet all the Obligations assumed by the District, in accordance with Texas Water Code § 15.607;
2. that 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. that the District has submitted a proposed program of water conservation 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;
4. 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); and

5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the District and filed with the TWDB in accordance with Texas Water Code § 16.053(j).

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

A commitment is made by the TWDB to the West Wise Special Utility District for financial assistance in the amount of \$13,430,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$13,430,000 West Wise Special Utility District Revenue Bonds, Proposed Series 2017. This commitment will expire on January 31, 2018.

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 31 TAC Chapter 371;
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, 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 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 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 remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the District to submit a final accounting and disposition of any unused funds;
8. the Obligations must include a provision requiring the District to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting 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) deposit into a reserve fund;
9. 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;
10. 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, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
11. 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;
12. prior to closing, the District shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges for the repayment of all system debt service requirements. Such rates and charges must have either been approved by the Public Utility Commission or have been in place for a sufficient amount of time that they are no longer be subject to review by the Public Utility Commission;
13. prior to closing, and if not previously provided with the application, the District 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;

14. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the District 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;
15. the Executive Administrator may require that the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
16. 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 Executive Administrator;

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" within the meaning of § 141 of the Internal Revenue Code of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
20. the Obligations must provide that no portion of the proceeds of the loan will be used, directly or indirectly, in a manner that would cause the Obligations to be "arbitrage bonds" within the meaning of § 148(a) of the Code and Regulations, including to acquire or to replace funds which were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) 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 after the issue date of the Source Series Bonds 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 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

Obligations, 125% of average annual debt service on the Obligations, or 10 percent of the stated principal amount (or, in the case of a discount, the issue price) of the Obligations;

21. the Obligations must include a provision requiring the District take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the District will:
 - a. account for all Gross Proceeds, as defined in the Code and Regulations, (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, as defined in the Code and Regulations, 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 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 Code will be satisfied. This requirement may be satisfied by filing an IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 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 neither the District nor a related party thereto will acquire any of the TWDB's Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the District by the TWDB;

State Revolving Fund Conditions

27. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
28. 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 District, 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 financial assistance made available as provided herein shall insert in full in any contract in excess of \$2,000 the contracts clauses as provided by the TWDB;
29. the Obligations 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, as amended by Pub. L. 110-252. The District shall obtain a Data Universal Numbering System (DUNS) Number and shall register with System for Award 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 40 CFR § 35.3135(d), and also shall provide that the District will adhere to the approved project schedule;
31. The Obligations must contain a covenant that the District will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

32. prior to or at closing, the District shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;

33. prior to 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 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 professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the District 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;

Pledge Conditions for the Loan

35. the Obligations must require the accumulation of a reserve fund of the lesser of 10 percent of the principal amount of the bonds, or 1.25 percent of the average annual debt service requirements, or the maximum annual debt service requirements on the bonds, 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;
37. the Obligations must contain a provision providing that additional revenue obligations may only be incurred if: the District is not in default as to any covenant or requirement of any Prior Lien Obligations; and if net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are 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;

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

Special Conditions:

38. prior to closing, the District shall adopt and implement the water conservation program approved by the TWDB;
39. prior to 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 District 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 such a finding will be made before the release of funds for construction;
40. prior to 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 District has the right to use the water that the project financed by the TWDB will provide;

41. 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;
42. 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; and
43. prior to the release of funds, the District shall provide a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule; and
44. prior to closing, the District shall provide its rate study to the Executive Administrator.

APPROVED and ordered of record this 10th day of February, 2017.



TEXAS WATER DEVELOPMENT BOARD

Bech K. Bruun

Bech K. Bruun, Chairman

DATE SIGNED: 2-10-17

ATTEST:

Jeff Walker

Jeff Walker
Executive Administrator



PO Box 566
Bridgeport, Texas 76426
940-683-5507 – Office
940-683-6607 – Fax

October 14, 2021
Texas Water Development Board
Northeast Water Project Development
1700 N. Congress Ave., Suite 610B
Austin, TX 78701
(512) 463-7847
Attn: Mr. Joe Koen, P.E.

Re: TWDB Project No. 62730 West Wise 2017 Water System Improvements Change in Scope

Dear Mr. Koen:

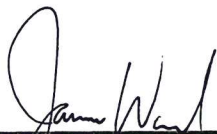
With this letter, the West Wise Special Utility District, requests a change in scope for the TWDB Project No. 62730 titled “West Wise 2017 Water System Improvements”. The original loan amount approved by the Texas Water Development Board was \$13,430,000.00. The change in scope request would be for the utilization of the remaining \$10,568,626.00 from the Drinking Water State Revolving Fund loan granted to the district. The district is in substantial need of three projects with regards to their water system. A new 2 MGD Hybrid Surface Water Treatment Plant, a new 200,000 Gallon Elevated Storage Tank, and a new 12” water line.

The original scope of the project was the following: Planning, design and construction of a new surface water intake, pump station, 12” Water Line, Automatic Meter Reading System, and a new 2 million gallon per day (MGD) SWTP. The major project components from the original scope included new multi-level surface water intake and pump station in Lake Bridgeport, a raw water pipeline from the intake to the treatment plant, a new enhanced coagulation water treatment plant including; rapid mixing ,tapered flocculation, high rate clarification, mixed media filtration, chemical feed facilities ground storage/clearwells, high service pumping and transmission line to existing system, backwash waste and underflow solids gravity thickening, sludge drying beds, maintenance building, standby generator and ATS, and appurtenant site civil works, including security fencing . This project will allow the District to reliably meet Stage 2 Disinfection Byproduct requirements, and to fulfill the Agreed Order with TCEQ. Design and construction of a chlorine dioxide pilot system was implemented at the existing West Wise SUD surface water treatment plant in order to meet Stage 2 Disinfection Byproduct requirements. \$39,950.00 and \$58,000.00 of the TWDB approved loan have been spent for the design and construction of the system, respectively.

The requested modified scope is the following: Redesign and Inspection of a new 2 MGD hybrid SWTP, design and construction of a 12" Water Line, and design and construction of a 200,000 gallon Elevated Storage Tank. The construction funds for the new 2 MGD hybrid SWTP will come from a USDA loan; pending the approval of the application and loan.

We appreciate all of the assistance that your staff has provided and look forward to completing this project with your ongoing support. Please contact me, James Ward, the District General Manager directly at (940) 683-5507 or via email at jlwestwise@wccs.net should you have any questions or require additional information.

Respectfully,



James Ward
General Manager-West Wise Special Utility District

CC: Mr. Jeff James, P.E.- Kimley-Horn
Mr. Kyle Kubista, P.E.- Kimley-Horn
Kimley-Horn
801 Cherry St Suite 1300, Unit 11
Fort Worth, TX 76102