

AGENDA ITEM MEMO

BOARD MEETING DATE: July 25, 2023

TO: Board Members

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

FROM: T. Clay Schultz, Ph.D., Director, Regional Water Project Development
Tom Barnett, Manager, Regional Water Project Development

SUBJECT: Amendment to the Brushy Creek Regional Utility Authority Closing Schedule

ACTION REQUESTED

Consider amending by resolution the previously adopted Texas Water Development Board Resolution No. 21-082 to modify the Brushy Creek Regional Utility Authority's State Water Implementation Revenue Fund for Texas annual closing schedule and extend the commitment to December 31, 2024.

BACKGROUND

The Brushy Creek Regional Utility Authority (Authority) was established in 2007 as a regional partnership of the cities of Cedar Park, Leander, and Round Rock (Cities). The partnership was formed to withdraw, treat, and deliver water from Lake Travis to provide a long-term, reliable new source of water supply to the Cities.

The regional project has received Texas Water Development Board (TWDB) funding for planning, acquisition, design, and construction of previously completed and ongoing phases. In 2008, the Authority received a funding commitment from the Texas Water Development Fund for \$182,020,000 for a new water treatment plant and transmission infrastructure. The project subsequently received State Water Implementation Revenue Fund for Texas (SWIRFT) funding for additional project phases in 2017 and 2018, totaling \$32,735,000 utilizing low-interest and deferred funding options.

Our Mission

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

Board Members

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member | L'Oreal Stepney, P.E., Board Member
Jeff Walker, Executive Administrator

In 2021, the TWDB approved a \$194,400,000 multi-year commitment to the Authority from the SWIRFT for construction of Phase 1D and Phase 2 of the regional water system, with closing scheduled to occur in 2021, 2022, and 2023. The commitment was comprised of low-interest financing for Cedar Park and a multi-year commitment to be closed over three years for Leander. In November 2021, the Authority closed the first commitment amount of \$115,310,000. In November 2022, they closed on the second multi-year commitment amount of \$40,000,000. The third and final closing under this multi-year commitment for \$39,090,000 was scheduled to close in November 2023, but the Authority has requested this closing be moved to 2024 to better align with the construction schedule.

In 2023, the Authority submitted a financial assistance application for additional funding from the SWIRFT for a multi-year commitment for \$98,055,000 in additional construction funds, with proposed closings in 2023, 2024, and 2026.

KEY ISSUES

The TWDB issued a notice-to-proceed concurrence for the Phase 2 Raw Water Delivery System in June 2022. Construction is underway and is expected to be complete by 2027. The TWDB issued a notice-to-proceed concurrence for the Phase 1D Water Treatment Plant Expansion in May 2023. Construction is scheduled to begin later this year, with completion expected by early 2025. The requested change to the annual closing schedule will better align with the Authority’s construction cash flow needs.

The Authority is requesting to modify its annual closing schedule to move its anticipated 2023 closing to 2024. The requested change is shown below.

Year	Amount per Resolution No. 21-082	Proposed Revised Closing
2021	\$115,310,000	Closed
2022	\$40,000,000	Closed
2023	\$39,090,000	\$0
2024	\$0	\$39,090,000
Total	\$194,400,000	\$39,090,000

RECOMMENDATION

The requested amendment does not change the total amount of financing to the Authority. In order to meet the Authority’s financing needs and better align the financing with the construction schedule, the Executive Administrator recommends that TWDB Resolution 21-082 be amended to reflect the annual closing schedule described above and extend the commitment to December 31, 2024.

Attachments

1. Proposed Resolution (23-)
2. Resolution (21-082)
3. Authority’s 2023 response to annual closing schedule

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
AMENDING TEXAS WATER DEVELOPMENT BOARD RESOLUTION NO. 21-082
PROVIDING FINANCIAL ASSISTANCE TO THE
BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.

(23-)

Recitals:

At its meeting on July 22, 2021, the Texas Water Development Board (TWDB), by TWDB Resolution No. 21-082, made a multi-year commitment to the Brushy Creek Regional Utility Authority, Inc. (Authority), for financial assistance in the amount of \$194,400,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), through the purchase of \$75,310,000 Brushy Creek Regional Utility Authority, Inc., City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2021 (Brushy Creek Regional Water Treatment and Distribution Project) and through a multi-year commitment of \$119,090,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2021-2023 (Brushy Creek Regional Water Treatment and Distribution Project), all as is more specifically set forth in the TWDB's Resolution No. 21-082, and accompanying documentation, to which documents express reference is made.

The Authority has requested that the TWDB amend TWDB Resolution 21-082, to modify the Authority's Annual Closing Schedule for a proposed series of bonds in 2023, requesting instead to receive a distribution of those proceeds in 2024, and to extend the TWDB's commitment an additional 12 months.

Findings:

1. The Authority indicates that this change is needed in order to align financing more closely with the requirements and timing of the project.
2. The proposed amendment to TWDB Resolution No. 21-082, as requested by the Authority, is reasonable, within the public interest, and will serve a public purpose.
3. In accordance with the Texas Water Code, the TWDB has carefully considered all matters required by law.

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

1. The commitment made through TWDB Resolution No. 21-082 to the Brushy Creek Regional Utility Authority, Inc., is amended as follows:
 - a. The proposed 2023 scheduled distribution is amended to read:
 - i. \$39,090,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2024 (Brushy Creek Regional Water Treatment and Distribution Project).
 - b. The amended commitment will expire on December 31, 2024.
2. All other terms and conditions of TWDB Resolution No. 21-082 shall remain in full force and effect.

APPROVED and ordered of record this the 25th day of July 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Amanda Lavin, Assistant Executive Administrator

**A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$194,400,000 TO THE BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
THROUGH THE PROPOSED PURCHASE OF
\$75,310,000 BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.,
CITY OF CEDAR PARK, TEXAS CONTRACT REVENUE BONDS, PROPOSED SERIES 2021
(BRUSHY CREEK REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT) AND
IN THE FORM OF A MULTI-YEAR COMMITMENT
\$119,090,000 BRUSHY CREEK REGIONAL UTILITY AUTHORITY, INC.,
CITY OF LEANDER, TEXAS CONTRACT REVENUE BONDS, PROPOSED SERIES 2021-2023
(BRUSHY CREEK REGIONAL WATER TREATMENT AND DISTRIBUTION PROJECT)**

(21-082)

WHEREAS, the Brushy Creek Regional Utility Authority, Inc. (Authority) has filed an application for financial assistance in the amount of \$194,400,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the construction of certain water supply project(s) identified as Project No. 51049 (Project); and

WHEREAS, the Authority seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$75,310,000 Brushy Creek Regional Utility Authority, Inc., City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2021 (Brushy Creek Regional Water Treatment and Distribution Project), and in the form of a multi-year commitment the proposed purchase of \$119,090,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2021-2023 (Brushy Creek Regional Water Treatment and Distribution Project), (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the Authority has offered a pledge of contract revenues as sufficient security for the repayment of the Obligations; and

WHEREAS, subject to the Authority's use of an approved debt service structure, interest rate subsidies are available to the Authority for State Fiscal Year 2021 at up to the following levels: 25% for financial assistance for a term of 20 years, 18% for financial assistance for a term of 21 to 25 years, and 14% for financial assistance for a term of 26 to 30 years. The interest rate subsidy applicable to each subsequent proposed series may be different than the interest rate subsidy available for State Fiscal Year 2021 and will be set through each financing agreement executed between the TWDB and the Authority; and

WHEREAS, the interest rate subsidies provided above are based on assumptions necessary to generate an optimum debt service structure for the anticipated TWDB SWIRFT bond issuance, and are subject to modification as necessary to preserve and maintain the integrity of the SWIRFT Program; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the Project is a recommended water management strategy project in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that the Authority satisfactorily completed all requests by the Executive Administrator or a regional planning group for information relevant to the Project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2); and
4. that the Authority has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to the Brushy Creek Regional Utility Authority, Inc. for financial assistance in the amount of \$194,400,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of:

- a) \$75,310,000 Brushy Creek Regional Utility Authority, Inc., City of Cedar Park, Texas Contract Revenue Bonds, Proposed Series 2021 (Brushy Creek Regional Water Treatment and Distribution Project). This commitment will expire on December 31, 2021;
- b) \$40,000,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2021 (Brushy Creek Regional Water Treatment and Distribution Project). This commitment will expire on December 31, 2021;
- c) \$40,000,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2022 (Brushy Creek Regional Water Treatment and Distribution Project). This commitment will expire on December 31, 2022; and
- d) \$39,090,000 Brushy Creek Regional Utility Authority, Inc., City of Leander, Texas Contract Revenue Bonds, Proposed Series 2023 (Brushy Creek

Regional Water Treatment and Distribution Project). This commitment will expire on December 31, 2023.

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 the Authority has complied with all of the requirements of the laws under which said Obligations were issued; 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 Authority;
3. this commitment is contingent upon the Authority's continued compliance with all applicable laws, rules, policies, and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the Authority executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;
5. interest rate subsidies for non-level debt service structure are subject to adjustment by the Executive Administrator;
6. the Authority shall use a paying agent/registrar in accordance with 31 TAC § 363.42(c)(2), and shall require the paying agent/registrar to provide a copy of all receipts documenting debt service payments to the TWDB and to the TWDB's designated Trustee;

The Following Conditions Must Be Included in the Obligations:

7. the Obligations must provide that the Obligations can be called for early redemption on any date beginning on or after the first interest payment date that 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;
8. the Obligations must provide that the Authority will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
9. the Obligations must provide that the Authority must comply with all conditions as specified in the final environmental finding of the Executive Administrator when

issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;

10. the Obligations must contain a provision requiring the Authority to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
11. the Obligations must include a provision wherein the Authority, 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 Authority'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 Authority's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Authority is an obligated person with respect to such bonds under SEC Rule 15c2-12;
12. the Obligations must include a provision requiring the Authority to use any proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the Project and completion of a final accounting in a manner approved by the Executive Administrator;
13. 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;
14. financial assistance 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;
15. financial assistance proceeds shall not be used by the Authority 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 Authority 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, recycling and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the Authority, its contractors, consultants, agents, officials and employees as a result of activities relating to the Project to the extent permitted by law;

16. the Obligations must include a provision stating that the Authority shall report to the TWDB the amounts of Project funds, if any, that were used to compensate historically underutilized businesses that worked on the Project, in accordance with 31 TAC § 363.1312;
17. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC § 363.42(c)(1);
18. the Obligations must contain a provision stating that the Authority shall abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by Texas Government Code, Chapter 2252, Subchapter G and Texas Water Code § 17.183;
19. the Obligations must include a provision prohibiting the Authority from using the proceeds of this financial assistance in a manner that would cause the Obligations to become "private activity bonds" within the meaning of § 141 of the Internal Revenue Code as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
20. the Obligations must provide that no portion of the proceeds of the financial assistance 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 that were used, directly or indirectly, to acquire Nonpurpose Investments (as defined in the Code and Regulations) that produce a yield materially higher than the yield on the TWDB's bonds that are issued to provide financing for the financial assistance (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 Authority 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 Authority 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 Authority may, however, to the extent permitted by law, commingle Gross Proceeds of its financial assistance with other money of the Authority, provided that the Authority 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 financial assistance, 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 Authority shall maintain a copy of such calculations for at least six years after the final Computation Date;
 - c. as additional consideration for providing financial assistance, and in order to induce providing financial assistance 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 Authority 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 Authority 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 Obligations must contain a covenant that the Authority will refrain from using the proceeds of the Obligations to pay debt service on another issue of obligations of the borrower in contravention of section 149(d) of the Code (related to "advance refundings");

25. the Obligations must provide that neither the Authority 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 Authority by the TWDB;
26. the Obligations must contain a provision requiring that, upon request by the Executive Administrator, the Authority shall submit annual audits of contracting parties for the Executive Administrator's review;
27. the Obligations must contain a provision requiring the Authority to maintain and enforce the contracts with its customers so that the revenues paid to the Authority by its customers are sufficient to meet the revenue requirements of the Authority's obligations arising from the operation of the water system;
28. the Obligations must contain a provision that the pledged contract revenues from the Authority may not be pledged to the payment of any additional parity obligations of the Authority secured by a pledge of the same contract revenues unless the Authority demonstrates to the Executive Administrator's satisfaction that the pledged contract revenues will be sufficient for the repayment of all Obligations and additional parity obligations;

Conditions to Close or for Release of Funds:

29. prior to closing, if not previously provided with the application, the Authority shall submit executed contracts for engineering and, if applicable, financial advisor and bond counsel, 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;
30. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the Authority 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;
31. prior to closing, the Authority'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 Authority when rendering this opinion;
32. prior to closing, the Authority's bond counsel must prepare a written opinion that states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the Authority when rendering this opinion;
33. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Authority's reasonable expectations regarding the use, expenditure, and investment of the proceeds of the Obligations;

34. the transcript must include evidence that the information reporting requirements of § 149(e) of the Internal Revenue 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; and
35. prior to closing, the Authority must submit executed contracts between the Authority and the contracting parties regarding the contract revenues pledged to the payment of the Authority's Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties' annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Authority's debt service obligations and additional parity obligations.

APPROVED and ordered of record this, the 22nd day of July 2021.

TEXAS WATER DEVELOPMENT BOARD


Brooke T. Paup

Brooke T. Paup, Chairwoman

DATE SIGNED: July 22, 2021

ATTEST:

Jeff Walker

Jeff Walker, Executive Administrator



**Multi-Year Commitment
Annual Loan Closing Schedule**

Brushy Creek Regional UA

Project# 51049

Brushy Creek Regional Utility Authority Water Treatment and Distribution Project

Annual Loan Closing Schedule

Year	Amount per Resolution No. 17-072/ 18-083/ 21-082	Proposed Revised Amount (If Applicable)
Prior Years Total	\$188,045,000	
2023	\$39,090,000	\$0
2024	\$	\$39,090,000
2025	\$	
2026	\$	
2027	\$	
2028	\$	
2029	\$	
2030	\$	
TOTAL	\$227,135,000	

NOTE: The overall structure and approach are intended to allow applicants to achieve savings while maintaining the integrity of the SWIFT program and includes subsidies based on level-debt service schedules for all low-interest obligations. Interest rate subsidies for non-level debt service are subject to modification.

If closing schedule is revised, please leave a brief explanation for the change.

Construction cash flow is not as aggressive as initially anticipated.

Contact Information

Please provide the best point of contact for TWDB staff to discuss your anticipated closing schedule.

Karen Bondy, General Manager

Contact Name and Title

512-688-0475

Phone Number

kbondy@bcrua.org

Email Address