

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: June 6, 2023

Team Manager: Jesse Milonovich

ACTION REQUESTED

Consider approving by resolution a request from El Paso Water acting on behalf of the City of El Paso (El Paso County) for \$28,930,096 in financial assistance consisting of \$8,680,000 in financing and \$20,250,096 in grant from the Economically Distressed Areas Program for planning, design, and construction of a wastewater collection system project.

STAFF RECOMMENDATION

Approve No Action

BACKGROUND

El Paso Water (formerly known as “El Paso Water Utilities”) is a non-profit, public utility that serves the City of El Paso (City) located in El Paso County (County). El Paso Water is governed by the Public Service Board. El Paso Water provides water service to approximately 218,646 metered connections and wastewater service to approximately 208,718 connections.

The Montana Vista community is located in the eastern portion of the County with approximately 2,396 households with 8,132 residents. These residents have received water service through either El Paso Water or the El Paso County East Montana Water System since 1996, but no wastewater service. Currently, the residents rely on on-site sewage facilities, cesspools, or discharge wastewater directly onto the surface.

El Paso Water previously received four Economically Distressed Areas Program (EDAP) commitments in 2014 through 2018, for the planning, design, and construction of a three-phased project to provide first-time wastewater service to the Montana Vista community totaling \$15,703,016. These funds were used primarily for the overall planning and design, and to construct that part of the wastewater system within the Phase I project area. Construction of Phase I is nearly complete and will provide wastewater service to over 800 households. El Paso Water intends to construct Phase II at this time, which will provide first-time service to 775 households (2,616 residents Phase II only). Phase II includes the installation of approximately 88,976 linear feet (16.8 miles) of PVC pipe, 196 manholes, and the decommissioning of 775 septic tanks. For Phase III, El Paso Water plans on returning for additional EDAP funding and has also reached out to the North American Development Bank about potential funding.

PROJECT NEED AND DESCRIPTION

The Montana Vista community has a critical need for a centralized wastewater collection system. A significant portion of the community’s on-site sewer facilities are aging and in disrepair, resulting in conditions that pose a public health nuisance, as determined by the

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE DECEMBER 31, 2023
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Texas Department of State Health Services (TDSHS). Poor septic system conditions contribute to cost, odor, and environmental harm.

El Paso Water proposes to construct first-time wastewater collection services to 775 households (2,616 residents Phase II only), Phase II of its ongoing Montana Vista Wastewater Collection System project. The work would include the installation of a new centralized gravity flow wastewater transmission line, various diameter collection lines, and manholes. Also, 775 existing septic systems will be decommissioned.

PROJECT SCHEDULE

Task	Schedule Date
Closing	September 30, 2023
Start of Construction	April 19, 2024
Construction Completion	September 30, 2025

KEY ISSUES

In September 2012 and September 2015, the TDSHS determined that a nuisance dangerous to the public health and safety exists in the proposed project area. Under Texas Water Code § 17.933(b), this determination qualifies the applicant for a grant exceeding 50 percent of the project costs. Consistent with the Intended Use Plan for the current EDAP funding cycle, the Executive Administrator recommends setting the grant amount at 70 percent of eligible costs for projects that have received a nuisance determination.

LEGAL/SPECIAL CONDITIONS

- Executed grant agreement
- Return surplus grant funds

Attachments

1. Financial Review
2. Project Budget
3. Resolution (23-)
4. Water Conservation Review
5. Location Map

Financial Review El Paso Water

Risk Score: 2B

Audit Reviewed: FY 2022

Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	City: 0.45%	State: 1.49%
Top 10 Customers % of Total Revenue	18.6%	10-15%
Median Household Income as % of State	66%	100%
Days of Cash on Hand (3-year Average)	133 days	30-149 days
Net Fixed Assets/ Annual Depreciation	18 years	12-24 years
Debt Service Coverage Ratio	1.59x	1.0x
Debt-to-Operating Revenues	4.27	4.00-5.99x
Unemployment Rate (March 2023)	City: 4.40%	State: 4.20%
Working Capital Ratio	0.841	> 1.0
Cash Balance Ratio	9.71%	0-9.99%

Key Risk Score Strengths

- Water and sewer system revenues are sufficient to cover both the existing and the proposed obligation.
- El Paso Water’s positive cash balance ratio indicates an overall upward trend in funds.
- El Paso Water’s net fixed assets/annual depreciation is within the benchmark, indicating the fixed assets are still within their useful life.
- Covenants in the 2019 bond ordinance established that rates for water and sewer services would be maintained such that revenues would be sufficient to meet 1.5 times required debt service coverage on all existing senior lien debt, indicating historical debt coverage beyond requirements.

Key Risk Score Concerns

- Population growth is lower than the benchmark. However, there has been upward growth in the number of active connections over the last five years, and the 2022 State Water Plan projects a 19.9 percent overall increase in the service area’s population from 2030-2050.
- Top ten customers as a percentage of total revenue is above the benchmark. However, eight out of ten of these customers are municipalities and other authorities.
- The median household income is lower than the state benchmark. However, the total debt per capita is at \$1,609, indicating a low impact on the constituency.

PLEDGE

Legal Pledge Name	Water and Sewer System Revenues
Type of Pledge	<input type="checkbox"/> Tax <input checked="" type="checkbox"/> Revenue <input type="checkbox"/> Tax & Revenue <input type="checkbox"/> Contract <input type="checkbox"/> Other
Revenue Pledge Level	<input checked="" type="checkbox"/> First <input type="checkbox"/> Second <input type="checkbox"/> Third <input type="checkbox"/> N/A

RATES AND CHARGES

Average Residential Use	Gallons/Month	Current Rates	Projected Rates	Current Household Cost Factor	Projected Household Cost Factor
Water	7,480	\$37.30	\$37.30	1.82	1.82
Wastewater	Not measured	\$24.77	\$24.77		

Cost Savings

Based on a 20-year maturity schedule and current interest rates, El Paso Water could save approximately \$129,976 over the life of the financing. El Paso Water is also saving \$20,250,096 in grant funding.

Responsible Authority	El Paso Water
Program	EDAP
Commitment Number	G1001653, L1001652
Project Number	10438
List Year	2022
Type of Pledge	Revenue Pledge
Pledge Level (if applicable)	First Lien
Legal Description	\$20,250,096 Grant agreement, \$8,680,000 City of El Paso, Texas, Water and Sewer System Revenue Bonds, Series 2023
Tax-exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow Release
Qualifies as Disadvantaged	Yes
Financial Managerial & Technical Complete	Yes
Phases Funded	Planning, Design, and Construction
Pre-Design	Yes
Project Consistent with State Water Plan	N/A
Water Conservation Plan	Adopted
Overall Risk Score	2B

PROJECT TEAM

Team Manager	Financial Analyst	Engineering Reviewer	Environmental Reviewer	Attorney
Jesse Milonovich	Kyle DuQuesnay	Andrew Tilton	Chris Caran	Breann Hunter

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY

El Paso Water

\$8,680,000 City of El Paso, Texas, Water and Sewer System Revenue Bonds, Proposed Series 2023

Dated Date: 9/30/2023	Source: EDAP
Delivery Date: 9/30/2023	Rate: 3.56%
First Interest: 2/15/2024	IUP Year: 2022
First Principal: 2/15/2024	Case: First Lien Revenues
Last Principal: 2/15/2044	Admin.Fee: \$0
Fiscal Year End: 02/28	Admin. Fee Payment Date: N/A
Required Coverage: 1.0	

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$8,680,000 ISSUE				TOTAL DEBT SERVICE	TOTAL DEBT COVERAGE
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2024	\$156,044,162	\$95,353,122	\$0	-	\$106,082	\$106,082	\$95,459,203	1.63
2025	156,044,162	97,574,070	335,000	2.55%	282,885	617,885	98,191,954	1.59
2026	156,044,162	97,090,402	285,000	2.45%	274,342	559,342	97,649,744	1.60
2027	156,044,162	97,396,599	300,000	2.41%	267,360	567,360	97,963,958	1.59
2028	156,044,162	97,348,465	315,000	2.41%	260,130	575,130	97,923,595	1.59
2029	156,044,162	99,685,883	330,000	2.39%	252,538	582,538	100,268,421	1.56
2030	156,044,162	95,701,565	345,000	2.39%	244,651	589,651	96,291,216	1.62
2031	156,044,162	95,552,610	360,000	2.40%	236,406	596,406	96,149,016	1.62
2032	156,044,162	95,418,454	375,000	2.45%	227,766	602,766	96,021,220	1.63
2033	156,044,162	86,348,608	390,000	2.49%	218,578	608,578	86,957,186	1.79
2034	156,044,162	86,078,896	410,000	2.75%	208,867	618,867	86,697,763	1.80
2035	156,044,162	81,731,801	425,000	3.03%	197,592	622,592	82,354,393	1.89
2036	156,044,162	79,349,798	445,000	3.30%	184,715	629,715	79,979,513	1.95
2037	156,044,162	70,702,893	465,000	3.51%	170,030	635,030	71,337,922	2.19
2038	156,044,162	63,507,181	485,000	3.66%	153,708	638,708	64,145,889	2.43
2039	156,044,162	56,133,697	510,000	3.76%	135,957	645,957	56,779,654	2.75
2040	156,044,162	50,580,214	530,000	3.88%	116,781	646,781	51,226,995	3.05
2041	156,044,162	46,530,419	555,000	3.95%	96,217	651,217	47,181,636	3.31
2042	156,044,162	44,020,972	580,000	4.01%	74,295	654,295	44,675,266	3.49
2043	156,044,162	40,887,025	605,000	4.08%	51,037	656,037	41,543,062	3.76
2044	156,044,162	40,524,750	635,000	4.15%	26,353	661,353	41,186,103	3.79
		\$1,617,517,425	\$8,680,000		\$3,786,285	\$12,466,285	\$1,629,983,709	

AVERAGE (MATURITY) LIFE	12.24 YEARS
NET INTEREST RATE	3.565%
COST SAVINGS	\$129,976
AVERAGE ANNUAL REQUIREMENT	\$593,633

Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable. The TWDB does not function as a financial advisor to anyone in connection with this financing. The information contained in this document is used by TWDB staff to analyze the application for financing is illustrative only and does not constitute any guaranty of future rates. The TWDB makes no claim regarding the applicability of the information at closing, at which time actual rates will be set.



Current Budget Summary
El Paso Water
10438 - Montana Vista Wastewater System

Budget Items	Description	Previous Commitments	This Commitment	Local Funds	Total
Construction					
Construction		\$11,081,110.00	\$22,541,567.00	\$1,040,758.10	\$34,663,435.10
Subtotal for Construction		\$11,081,110.00	\$22,541,567.00	\$1,040,758.10	\$34,663,435.10
Basic Engineering Services					
Planning		\$87,877.00	\$0.00	\$0.00	\$87,877.00
Planning	Category A	\$5,616.00	\$0.00	\$13,104.00	\$18,720.00
Planning	Category B	\$7,200.00	\$0.00	\$16,800.00	\$24,000.00
Planning	Category C	\$13,208.00	\$0.00	\$19,250.00	\$32,458.00
Planning	Category D	\$3,592.00	\$0.00	\$8,380.00	\$11,972.00
Design		\$2,170,000.00	\$0.00	\$0.00	\$2,170,000.00
Subtotal for Basic Engineering Services		\$2,287,493.00	\$0.00	\$57,534.00	\$2,345,027.00
Special Services					
Environmental		\$8,400.00	\$12,000.00	\$19,600.00	\$40,000.00
Geotechnical		\$198,000.00	\$400,000.00	\$0.00	\$598,000.00
Inspection		\$273,185.00	\$1,078,137.00	\$0.00	\$1,351,322.00
Permits		\$2,000.00	\$402,641.00	\$0.00	\$404,641.00
Project Management (by engineer)		\$168,191.00	\$361,379.00	\$0.00	\$529,570.00
Special Service Other	Storm Water PPP	\$0.00	\$0.00	\$0.00	\$0.00
Surveying		\$26,357.50	\$0.00	\$0.00	\$26,357.50
Subtotal for Special Services		\$676,133.50	\$2,254,157.00	\$19,600.00	\$2,949,890.50
Other					
Other	Impact Fees & Permits	\$469,480.00	\$751,750.00	\$0.00	\$1,221,230.00
Other	Lab Testing	\$209,913.00	\$0.00	\$0.00	\$209,913.00
Subtotal for Other		\$679,393.00	\$751,750.00	\$0.00	\$1,431,143.00
Contingency					
Contingency		\$978,886.50	\$3,382,622.00	\$11,571.00	\$4,373,079.50
Subtotal for Contingency		\$978,886.50	\$3,382,622.00	\$11,571.00	\$4,373,079.50
Total		\$15,703,016.00	\$28,930,096.00	\$1,129,463.10	\$45,762,575.10

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
IN THE AMOUNT OF \$28,930,096
TO EL PASO WATER
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF \$8,680,000 CITY OF EL PASO, TEXAS, WATER
AND SEWER REVENUE BONDS PROPOSED SERIES 2023
AND
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$20,250,096

(23 -)

WHEREAS, El Paso Water (EPW) acting on behalf of the City of El Paso, Texas (City), has filed an application seeking financial assistance in the amount of \$28,930,096 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, to finance certain wastewater system improvements, identified as Project No. 10438; and

WHEREAS, EPW seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of \$8,680,000 City of El Paso, Texas, Water and Sewer Revenue Bonds (together with all authorizing documents (Obligations)) and a grant of \$20,250,096 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, all as is more specifically set forth in the application and in recommendations of TWDB's staff; and

WHEREAS, the City has offered a pledge of water and sewer system revenue as sufficient security for the repayment of the Obligations;

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 § 363.16 and §363.43; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular the following:

1. the feasibility of creating a conservation and reclamation district to provide and finance the water supply or sewer services, in accordance with Texas Water Code § 16.346;
2. the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring economically distressed areas financing, and the relative costs and benefits of all applications, in accordance with Texas Water Code § 17.929(a)(1);

3. the availability to the political subdivision of revenue from alternative sources for the payment of the cost of the proposed project, in accordance with Texas Water Code § 17.929 (a)(2);
4. financing of the proposed water supply or sewer project, in accordance with Texas Water Code § 17.929(a)(3);
5. the feasibility of achieving cost savings by providing a regional facility for water supply and wastewater service and the feasibility of financing the facilities by using funds from the economically distressed areas account or any other financial assistance, in accordance with Texas Water Code § 17.929(a)(5);
6. the rates, fees and charges that the average customer to be served by the project will be able to pay, sources of funding available to the City, and any local funds of the City, in accordance with Texas Water Code § 17.933(d)(1);
7. sources of funding available to the City from federal and private funds and from other state funds, in accordance with Texas Water Code § 17.933(d)(2);
8. any local funds of the City to be served by the project if the economically distressed area to be served is within the boundary of the City, in accordance with Texas Water Code § 17.933(d)(3);
9. the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code, in accordance with Texas Water Code § 17.933(d)(4);

WHEREAS, the TWDB hereby finds:

1. that the City has adopted and implemented 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 TWDB's rules;
2. that the area to be served by the proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, in accordance with Texas Water Code § 17.929(b);
3. that the County and City has adopted model subdivision rules as promulgated by the TWDB pursuant to Texas Water Code § 16.343 and the manner of enforcement, in accordance with Texas Water Code § 17.929(a) (4);
4. that EPW has considered cost-effective innovative, nonconventional methods of treatment and will evaluate alternatives in greater detail through the planning phase of the project, in accordance with Texas Water Code § 17.189(b);

5. that the public interest will benefit from state assistance in the financing of the treatment works, in accordance with Texas Water Code § 17.277; and
6. that the Texas Department of State Health Services has determined that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project, in accordance with Texas Water Code § 17.933(b);

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

A commitment is made by the TWDB to El Paso Water acting on behalf of the City of El Paso for financial assistance in the amount of \$28,930,096 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II through the TWDB's proposed purchase of \$8,680,000 in City of El Paso, Texas, Water and Sewer Revenue Bonds, Proposed Series 2023 and a grant of \$20,250,096. This commitment will expire on December 31, 2023.

This 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 City's compliance with all applicable requirements contained in 31 TAC Chapter 363;
3. the Obligations and Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations and Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan and grant funds are public funds and, as such, the Grant Agreement and 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;
5. loan and grant funds shall not be used by the City when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Obligations and Grant Agreement shall include an environmental indemnification provision wherein the City 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 City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

6. prior to closing, and if not previously provided with the application, the City 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, under the contract, and acceptable to the Executive Administrator;
7. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City 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;
8. the Executive Administrator may require that the City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
9. 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 City;
10. 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;
11. the City, 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 City'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 City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
12. the Obligations must contain a provision requiring the City to levy a tax 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;

13. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project and after completion of a final accounting in a manner approved by the Executive Administrator;
14. prior to closing, the City 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;
15. the City must immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Penal Code § 1.10(f) (related to federal laws regulating firearms, firearm accessories, and firearm ammunition);
16. the Obligations must provide that the City will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
17. the Obligations must provide that the City 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;
18. the Obligations must contain a provision requiring the City to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
19. the Obligations must provide that the City will submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;
20. the Obligations must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products and manufactured goods produced in the United States, as required by Texas Water Code § 17.183;

Conditions Related to Tax-Exempt Status:

21. the City'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 City when rendering this opinion;

22. the City'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 City when rendering this opinion;
23. the Obligations must include a provision prohibiting the City 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);
24. 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;
25. the Obligations must include a provision requiring the City 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 City 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 City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City 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 City 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;
- 26. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 27. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 - 28. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
 - 29. 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;
 - 30. the Obligations must provide that neither the City 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 City by the TWDB;

EDAP Conditions:

31. the Grant Agreement and Obligations must include a provision that requires compliance with Texas Water Code § 16.356 that no revenues received from rates or fees collected from the water supply or wastewater system constructed in whole or in part from this commitment shall be used for any purposes other than utility purposes and that the annual financial statement prepared by the City under Texas Local Government Code § 103.001 shall include a specific report on compliance with this condition;
32. Prior to the release of funds provided for construction, the City must provide the TWDB with evidence satisfactory to the Executive Administrator that the City has received and will maintain a designation as an authorized agent of the Texas Commission on Environmental Quality, in compliance with Texas Health and Safety Code § 366.035;
33. the Grant Agreement and Obligations must include a provision that requires the City adequately enforce the authority granted to the City by Texas Water Code § 17.934(a)(2) to require and ensure that all property owners capable of receiving service from the system constructed with the funds provided by this resolution are actually connected to the sewer system constructed by these funds within a reasonable period of time not to exceed 90 days from the date the City notifies the property owner that service is available; provided, however, that the Executive Administrator may extend this time upon written request for good cause shown.

Pledge Conditions for the Loan:

34. 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;
35. if the City 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;
36. the Obligations must contain a provision providing that additional revenue obligations may only be incurred 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;

Special Conditions:

37. Prior to closing, EPW and the Executive Administrator shall execute an Agreement that sets forth the terms and uses of the grant funds; and
38. the Grant Agreement must include a provision stating that EPW shall return any grant funds that are determined to be Surplus Funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 6th day of June 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

Review Date:

Project ID:

Water
Wastewater
Other

WATER CONSERVATION REVIEW

Entity:

Other entity:

WATER CONSERVATION PLAN DATE:**Approvable****Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD
Baseline			
5-year Goal			
10-year Goal			

WATER LOSS AUDIT YEAR:

Service connections:

Length of main lines (miles):

Water Loss GCD:

Retail population:

Connections per mile:

Water Loss GPCD:

ILI¹:

1 – Infrastructure Leakage Index only applicable if > 16 connections per mile and > 3,000 service connections

WATER LOSS THRESHOLDS

Water Loss Project:

Wholesale Adjusted:

Threshold Type:

Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Loss Threshold Gallons per connection per day	Real Loss Threshold Gallons per mile per day	Real Loss Threshold Gallons per connection per day

Does the applicant meet Water Loss Threshold Requirements?

Yes**No****NA****ADDITIONAL INFORMATION****STAFF NOTES AND RECOMMENDATIONS**

DEFINITIONS

Adopted refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

Apparent losses are paper losses that occur when the water reaches a customer, but the volume is not accurately measured and/or recorded due to unauthorized consumption, customer meter inaccuracy, or billing system and collection data errors.

Approvable refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

Best Management Practices are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

GPCD means gallons per capita per day.

GCD means gallons per connection per day.

Infrastructure Leakage Index (ILI) is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 3,000 connections and a connection density of more than 16 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a bench marking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

NA means not applicable.

Real losses are the physical losses, largely leakage, from the infrastructure: mains, valves, and storage tank overflows. Real loss constitutes background leakage (unreported and difficult to detect), unreported leakage (leaks that do not surface but could be detected), and reported leakage (leaks that often surface and those that are detected by the utility through leak detection).

Residential GPCD is the amount of residential water use (single and multi-family customer use) divided by the residential population divided by 365.

Total GPCD is the amount of total system input volume divided by the retail population divided by 365.

Total water loss is the sum of the apparent and real water losses.

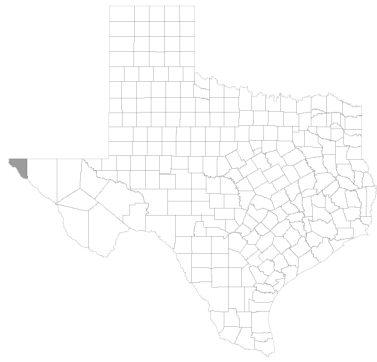
Water loss is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

Water Loss GPCD is the amount of water loss divided by the retail population divided by 365.

Water Loss per Connection per Day Calculated as the water loss volume divided by the number service connections divided by 365. This indicator allows for reliable performance tracking in the water utility's efforts to reduce water losses. It replaces water loss percentage.

Water Loss Thresholds are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.

Wholesale Adjusted represents that some utilities provide large volumes of wholesale water to other providers that travel through the general distribution system, so a calculation has been established to adjust for that volume of wholesale water. These adjustments are only applicable for use in determining whether a utility meets or exceeds water loss thresholds in review of their application for financial assistance. These adjustments should not be used for performance tracking or benchmarking.



El Paso Water Utilities El Paso County

