

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: January 29, 2015

TEAM MANAGER: Clay Schultz

APPLICANT	San Pedro Estates Water, Limited Liability Corporation
TYPE OF ASSISTANCE	\$240,281 Loan Forgiveness
LEGAL PLEDGE	N/A; 100% Loan Forgiveness

STAFF RECOMMENDATION

Approve No Action

ACTION REQUESTED

Approve by resolution, a request from **San Pedro Estates Water, Limited Liability Corporation (Val Verde County)** for \$240,281 in loan forgiveness from the Drinking Water State Revolving Fund to finance the design and construction of a new water well.

PROJECT

Water Well Replacement
Project Number 62654

FINANCIAL SUMMARY

Risk Score:	N/A
Pledge for Repayment:	N/A
Proposed Repayment Method:	N/A

COMMITMENT PERIOD: ONE (1) YEAR TO EXPIRE ON JANUARY 31, 2016

FINANCIAL

Key Issues

San Pedro Estates Water, Limited Liability Corporation (San Pedro) qualifies for \$240,281 in loan forgiveness from the Drinking Water State Revolving Fund program, consisting of \$200,000 in Very Small Systems funding and \$40,281 in Urgent Need funding.

Cost Savings

Based on a 100% loan forgiveness amount of \$240,281, the Corporation could save approximately \$477,000 over the life of the commitment.

Internal Risk Score

The funding being provided by the TWDB is in the form of 100% loan forgiveness and therefore is not subject to the risk score. For loan forgiveness in the Drinking Water State Revolving Fund, TWDB staff reviews financial information and other documentation to assess the entity's ability to manage existing obligations and business practices. Based on this analysis, staff believes San Pedro has adequate capabilities to manage its obligations.

LEGAL

Key Issues

None.

CONDITIONS

Standard taxable, Drinking Water State Revolving Fund conditions, and further conditioned as follows:

- Pre-Design funding;
- Water rights;
- Notification of sale-transfer-merger with another retail public utility;
- Conveyance and assumption;
- Executed Loan Forgiveness Agreement;
- Return any surplus funds; and,
- Standard emergency discovery conditions.

Attachments:

1. Project Data Summary
2. Engineering/Environmental Review
3. Project Budget
4. Resolution (15-)
5. Water Conservation Review
6. Location Map

Project Data Summary

Authority	San Pedro Estates Water, Limited Liability Corporation
Program	Drinking Water State Revolving Fund
Commitment Code	LF1000408
Project Number	62654
Intended Use Plan Year	2015
Fund Number	951
Type of Pledge	N/A (Loan Forgiveness)
Revenue Pledge Level	N/A
Legal Description	\$240,281 Loan Forgiveness Agreement
Tax-exempt or Taxable	Taxable
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow Release
Population	130
Rural	Yes
Water Connections	58
Wastewater Connections	None
Qualifies as Disadvantaged	No
Disadvantaged Level	9
Clean Water State Revolving Fund Type	N/A
Financial, Managerial, and Technical Review Complete?	No
Funding Phase Code	Design and Construction
Pre-Design	Yes
Project Consistent with Water Plan	Yes
Water Conservation Plan	N/A
Water Rights Certification Required	Yes
Internal Risk Score	N/A
External Ratings (for SRF rates)	
Standard and Poor's	Non-Rated
Moody's	Non-Rated
Fitch	Non-Rated
Special Issues	Infrastructure for a Private Entity; 100% loan forgiveness in Very Small Systems and Urgent Need funding

Project Team

Project Manager	Clay Schultz
Financial Analyst	Maxine Gilford
Engineering Reviewer	John Muras
Environmental Reviewer	Nicki Hise
Attorney	Barbara Watson

San Pedro Estates Water LLC
Engineering and Environmental Review

Engineering:Key Issues

San Pedro Estates Water is requesting Urgent Need funding from the Drinking Water State Revolving Fund. An Environmental Protection Agency (EPA) Administrative Order issued in September 2012 requires the system to be in compliance with maximum contaminant levels for combined radium 226, radium 228 and gross alpha particles. Failure to comply with the administrative order will further hinder the system's ability to achieve compliance with minimum drinking water standards and may result in additional enforcement action or monetary penalties from the EPA.

Project Need / Description

Need: San Pedro Canyon Estates is a very small community of approximately 58 homes located 8 miles north of Del Rio along the eastern shore of Amistad Reservoir. The water system serving the area was constructed in the late 1960's. Slower than expected growth in the area has resulted in a small customer base and limited financial resources for the system, making achieving compliance with subsequently enacted drinking water standards difficult. The Environmental Protection Agency is proceeding with enforcement action and issued an Administrative Order in September of 2012.

Project Description: San Pedro Estates Water, LLC is requesting Very Small Systems and Urgent Need Funding from the Drinking Water State Revolving Fund to fund design and construction of a project to address the elevated level of radionuclides in the system's water supply. Planning for the project has been completed and a new well that excludes zones of poor water quality is proposed to replace the existing well.

Project Schedule

Project Task	Schedule Date
Closing	4/1/2015
Engineering Feasibility Report Completion (End of Planning Phase)	4/15/2015
Design Phase Complete	5/1/2015
Start of Construction	6/1/2015
Construction Completion	9/30/2015

None

Environmental:Key Issues

None known at this time.

Environmental Summary

A Categorical Exclusion (CE) for this project was issued on November 24, 2014. As required by 31 Texas Administrative Code (TAC) §371.41, environmental review of the proposed

San Pedro Estates Water LLC

Engineering and Environmental Review

project has been completed. The proposed project is in compliance with the National Environmental Policy Act.

**San Pedro Estates Water LLC
62654 - Water Well Replacement**

Budget Items	TWDB Funds	Total Cost
Construction		
Construction	\$192,350	\$192,350
Construction Total	\$192,350	\$192,350
Basic Engineering Services		
Construction Engineering	\$3,687	\$3,687
Design	\$16,592	\$16,592
Basic Engineering Services Total	\$20,279	\$20,279
Contingency		
Contingency	\$27,652	\$27,652
Contingency Total	\$27,652	\$27,652
Grand Total	\$240,281	\$240,281

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE
TO SAN PEDRO ESTATES WATER, LLC
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH A LOAN IN THE AMOUNT OF \$240,281
WITH 100% LOAN FORGIVENESS

(15-)

WHEREAS, the San Pedro Estates Water, LLC (Company), located in Val Verde County, Texas has filed an application for financial assistance in the amount of \$240,281 from the Drinking Water State Revolving Fund (DWSRF) to finance the design and construction of certain water system improvements identified as Project No. 62654; and

WHEREAS, the Company seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$240,281 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the Company for the loan and no taxes or revenues are required to be pledged by the Company;
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 Company is exempt from requirements to adopt a water conservation program because the TWDB's financial assistance will be \$500,000 or less;
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);
5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the Company and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the Company meets the definition of a small water system in accordance with 31 TAC § 371.1(60) and the current Intended Use Plan, and is therefore eligible for subsidy through the DWSRF;
7. that the project is considered an Urgent Need Project under the current Intended Use Plan, and is therefore eligible for an additional subsidy through the DWSRF; and

8. that the Executive Administrator issued a Categorical Exclusion on November 24, 2014, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

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

A commitment is made by the TWDB to the San Pedro Estates Water, LLC for financial assistance in the amount of \$240,281 from the Drinking Water State Revolving Fund with 100% of the loan forgiven. This commitment will expire on January 31, 2016.

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 Company's compliance with all applicable requirements contained in 31 TAC Chapter 371;
3. the Loan Forgiveness Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Loan Forgiveness Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds are public funds and, as such, the Loan Forgiveness Agreement 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 proceeds shall not be used by the Company when sampling, testing, removing or disposing of contaminated soils and/or media at the project site. The Loan Forgiveness Agreement shall include an environmental indemnification provision wherein the Company 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 Company, 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 Company 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;

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

State Revolving Fund Conditions

9. the Company shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
10. the Loan Forgiveness Agreement 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 Company, 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;
11. the Loan Forgiveness Agreement must include a provision stating that the Company 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 Company 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 the term of the Loan Forgiveness Agreement;
12. the Loan Forgiveness Agreement 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 Company will adhere to the approved project schedule;
13. the Loan Forgiveness Agreement must contain a covenant that the Company 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 the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

14. 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 Company has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Loan Forgiveness Agreement; and
15. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Company 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.

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

Special Conditions:

1. the loan is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC Chapter 371;
2. 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 Company 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;
3. 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 Company has the right to use the water that the project financed by the TWDB will provide;
4. the Company 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;
5. the Obligations must include a provision requiring that, prior to any action by the Company 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;
6. prior to closing, the Company shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
7. the Loan Forgiveness Agreement must include a provision stating that the Company shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and

8. the Company must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 29th day of January, 2015.

TEXAS WATER DEVELOPMENT BOARD

Carlos Rubinstein, Chairman

DATE SIGNED: _____

ATTEST:

Kevin Patteson
Executive Administrator

WATER CONSERVATION REVIEW

Entity: _____ Review date: _____

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

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

WATER LOSS AUDIT YEAR:

Apparent loss (gallons): _____

Real loss (gallons): _____

Produced water (gallons): _____

Total water loss (percent): _____

Connections per mile: _____

Total water loss (GPCD): _____

If < 32 connections per mile, real loss (gallons) per mile per day: _____

(Average real loss for less than 32 connections is 1,154 gal/mile/day)

If > 32 connections per mile, real loss (gallons) per connection per day: _____

(Average real loss for greater than 32 connections is 47 gal/connection/day)

If > 16 connections per mile and > 3,000 connections

Infrastructure Leakage Index (ILI): _____

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 formerly approved and adopted by the applicant's governing body.

Apparent loss refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

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.

GPCD means gallons per capita 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 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 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.

Produced water is the total amount of water purchased or produced by the utility.

Real loss comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

Residential GPCD is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

Total baseline GPCD is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

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

**San Pedro Estates Water, LLC,
Val Verde County**

