

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: February 25, 2015

TEAM MANAGER: Nancy Richards

<b>APPLICANT</b>	City of Reklaw
<b>TYPE OF ASSISTANCE</b>	\$850,000 Loan \$200,000 Loan Forgiveness (Very Small System Program)
<b>LEGAL PLEDGE</b>	Combination Tax and Surplus Revenues Certificates of Obligations

### STAFF RECOMMENDATION

Approve       No Action

### ACTION REQUESTED

Approve, by resolution, a request from the **City of Reklaw (Cherokee and Rusk Counties)** for funding in the amount of \$1,050,000 consisting of a \$850,000 loan and \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance the construction costs relating to water system improvements including a new water well, pumping, and storage facilities.

### PROJECT

New Water Plant  
Project Number 62575

### FINANCIAL SUMMARY

Risk Score:	2C
Pledge for Repayment:	CO Tax and Surplus Revenues
Proposed Repayment Method:	CO Tax and Surplus Revenues
Operating Trends:	Positive
Coverage Ratio: ( First 5 years)	1.47x-2.12x

<b>COMMITMENT PERIOD: ONE (1) YEAR TO EXPIRE ON FEBRUARY 29, 2016</b>
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## FINANCIAL

### Key Issues

None

### Pledge and Repayment

The City of Reklaw (City) is offering a combination tax and surplus revenues pledge for repayment of the proposed loan. Staff has reviewed financial information and other documentation and determined that the City's current revenues and tax rate are sufficient to meet the proposed debt service requirements.

### Loan Forgiveness

The City qualifies for \$200,000 in loan forgiveness from the Drinking Water State Revolving Fund (DWSRF) program for Very Small Systems.

### Cost Savings

Based on a 30-year maturity schedule, current interest rates, loan and loan forgiveness funds, the City could save approximately \$400,000 over the life of the loan.

### Internal Risk Score

Staff assigns a risk score of 2C. A risk score of 2C means that the City's payment capacity is adequate. The applicant's earning trends and coverage ratios, while sound, may be more susceptible to moderate changes in circumstances and economic conditions than higher rated obligations. Certain risk elements may exist that suggest susceptibility to future impairment, if not managed.

The City's population has remained stable since 2010 and the median household income is \$36,458, or 70% of the State median household income. The City's 10.7 % unemployment rate is 6.1% points higher than the State's current unemployment rates of 4.6%. Currently, the City's customers pay an average of \$33.00 per month for water. This represents 1.01% of the median household income, which is equivalent to the TWDB benchmark for one service.

The City intends to review the system revenues on an annual basis to ensure that the necessary revenues are in place to repay the proposed debt service.

**LEGAL**

Key Issues

None.

**CONDITIONS**

Standard tax-exempt, tax and surplus revenues and Drinking Water State Revolving Fund conditions and further conditions as follows:

- Executed Loan Forgiveness Agreement;
- Return of surplus forgiveness funds; and
- Water Rights Certification.

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

**PROJECT DATA SUMMARY**

<b>Responsible Authority</b>	City of Reklaw
<b>Program</b>	Drinking Water State Revolving Fund
<b>Commitment Code</b>	L1000399 LF1000398
<b>Project Number</b>	62575
<b>Intended Use Plan Year</b>	2015
<b>Fund Number</b>	951
<b>Type of Pledge</b>	2
<b>Revenue Pledge Level</b>	N/A
<b>Legal Description</b>	\$850,000 Combination Tax and Surplus Revenues, Proposed Series 2015 and \$200,000 Loan Forgiveness
<b>Tax-exempt or Taxable</b>	Tax-exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay=Escrow Release
<b>Population</b>	379
<b>Rural</b>	Yes
<b>Water Connections</b>	213
<b>Wastewater Connections</b>	N/A
<b>Qualifies as Disadvantaged</b>	N/A
<b>Disadvantaged Level</b>	N/A
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>Financial, Managerial, and Technical Review Complete?</b>	Yes
<b>Phase Committing</b>	Construction
<b>Pre-Design</b>	N/A
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Approvable
<b>Water Rights Certification Required</b>	Yes
<b>Internal Risk Score</b>	2C
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	Non-Rated
<b>Moody's</b>	Non-Rated
<b>Fitch</b>	Non-Rated
<b>Special Issues</b>	None

**Project Team**

Manager	Nancy Richards
Financial Analyst	Charles R. Nichols
Engineering Reviewer	James Bronikowski
Environmental Reviewer	Chris Caran
Attorney	Annette Mass

**ISSUE BEING EVALUATED  
CITY OF REKLAW  
\$850,000 Combination Tax & Surplus Revenues Certificate of Obligations Proposed Series 2015**

Dated Date 04/30/15  
 Delivery Date 04/30/15  
 First Interest 09/01/15  
 First Principal 09/01/15  
 Last Principal 09/01/46  
 Fiscal Year End 12/31

Source: DWSRF  
 Rate: 2.10%  
 Insurance: No  
 Case: Tax & Revenues  
 Admin. Fee Payment Date: 4/30/2015  
 Administrative Fee: \$18,704

FOR ILLUSTRATION PURPOSES ONLY

FISCAL YEAR	PROJECTED ASSESSED VALUE	REQUIRED TAX RATE	REQUIRED TAX REVENUES WITH COLL. @	PROJECTED NET SYSTEM REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	----- THIS \$850,000 ISSUE -----				TOTAL DEBT SERVICE	COVERAGE	
							PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		BEING REQUIRED	ACTUAL COVERAGE
2015	-	-	-	55,176	55,176	-	20,000	2.10%	6,000	26,000	26,000	1.10	2.12
2016	-	-	-	55,176	55,176	-	20,000	2.10%	17,430	37,430	37,430	1.10	1.47
2017	-	-	-	55,176	55,176	-	20,000	2.10%	17,010	37,010	37,010	1.10	1.49
2018	-	-	-	55,176	55,176	-	20,000	2.10%	16,590	36,590	36,590	1.10	1.51
2019	-	-	-	55,176	55,176	-	20,000	2.10%	16,170	36,170	36,170	1.10	1.53
2020	-	-	-	55,176	55,176	-	20,000	2.10%	15,750	35,750	35,750	1.10	1.54
2021	-	-	-	55,176	55,176	-	20,000	2.10%	15,330	35,330	35,330	1.10	1.56
2022	-	-	-	55,176	55,176	-	20,000	2.10%	14,910	34,910	34,910	1.10	1.58
2023	-	-	-	55,176	55,176	-	20,000	2.10%	14,490	34,490	34,490	1.10	1.60
2024	-	-	-	55,176	55,176	-	25,000	2.10%	14,070	39,070	39,070	1.10	1.41
2025	-	-	-	55,176	55,176	-	25,000	2.10%	13,545	38,545	38,545	1.10	1.43
2026	-	-	-	55,176	55,176	-	25,000	2.10%	13,020	38,020	38,020	1.10	1.45
2027	-	-	-	55,176	55,176	-	25,000	2.10%	12,495	37,495	37,495	1.10	1.47
2028	-	-	-	55,176	55,176	-	25,000	2.10%	11,970	36,970	36,970	1.10	1.49
2029	-	-	-	55,176	55,176	-	25,000	2.10%	11,445	36,445	36,445	1.10	1.51
2030	-	-	-	55,176	55,176	-	25,000	2.10%	10,920	35,920	35,920	1.10	1.54
2031	-	-	-	55,176	55,176	-	25,000	2.10%	10,395	35,395	35,395	1.10	1.56
2032	-	-	-	55,176	55,176	-	25,000	2.10%	9,870	34,870	34,870	1.10	1.58
2033	-	-	-	55,176	55,176	-	25,000	2.10%	9,345	34,345	34,345	1.10	1.61
2034	-	-	-	55,176	55,176	-	30,000	2.10%	8,820	38,820	38,820	1.10	1.42
2035	-	-	-	55,176	55,176	-	30,000	2.10%	8,190	38,190	38,190	1.10	1.44
2036	-	-	-	55,176	55,176	-	30,000	2.10%	7,560	37,560	37,560	1.10	1.47
2037	-	-	-	55,176	55,176	-	30,000	2.10%	6,930	36,930	36,930	1.10	1.49
2038	-	-	-	55,176	55,176	-	30,000	2.10%	6,300	36,300	36,300	1.10	1.52
2039	-	-	-	55,176	55,176	-	30,000	2.10%	5,670	35,670	35,670	1.10	1.55
2040	-	-	-	55,176	55,176	-	30,000	2.10%	5,040	35,040	35,040	1.10	1.57
2041	-	-	-	55,176	55,176	-	30,000	2.10%	4,410	34,410	34,410	1.10	1.60
2042	-	-	-	55,176	55,176	-	35,000	2.10%	3,780	38,780	38,780	1.10	1.42
2043	-	-	-	55,176	55,176	-	35,000	2.10%	3,045	38,045	38,045	1.10	1.45
2044	-	-	-	55,176	55,176	-	35,000	2.10%	2,310	37,310	37,310	1.10	1.48
2045	-	-	-	55,176	55,176	-	35,000	2.10%	1,575	36,575	36,575	1.10	1.51
2046	-	-	-	55,176	55,176	-	40,000	2.10%	840	40,840	40,840	1.10	1.35
				\$ 1,765,632	\$ -	\$ 850,000			\$ 315,225	\$ 1,165,225	\$ 1,165,225		

AVERAGE (MATURITY) LIFE	17.66 YEARS
NET INTEREST RATE	2.100%
COST SAVINGS	\$400,000
AVERAGE ANNUAL REQUIREMENT	\$36,413

**Reklaw**  
**Engineering and Environmental Review**

**Engineering:**Key Issues

None.

Project Need / Description

Need: The City of Reklaw (City) water supply facilities, consisting of two wells, storage, and pumping, are more than 40 years old and in need of repair or replacement.

Project Description: The City will utilize funds to construct a new well geographically remote from their existing wells along with separate storage and pumping facilities. The City's current wells are located at a single site and this new well will allow the City to provide redundancy and ensure compliance with Texas Commission on Environmental Quality requirements.

Project Schedule

<b>Project Task</b>	<b>Schedule Date</b>
Design Phase Complete	12/31/2014
Closing	4/30/2015
Start of Construction	5/1/2015
Construction Completion	3/31/2016

**Environmental:**Key Issues

None known at this time.

Environmental Summary

As set forth in the preliminary environmental information submitted by the applicant, there are no known environmental, social, or permitting issues that would preclude construction of the project. Based on this initial environmental review, it is not anticipated that the proposed project's primary environmental impacts should be significant or adverse, nor should they affect project implementation.

Pursuant to the requirements of 31 Texas Administrative Code (TAC) §371.41 all financial assistance shall be conditioned to read that funding for design costs for specific project elements will not be released until the environmental review has been completed and a favorable environmental determination has been issued by the Executive Administrator. A subsequent Affirmation of Commitment will be necessary for this loan in order to comply with the National Environmental Policy Act.

**Reklaw**  
**62575 - New Water Plant**

<b>Budget Items</b>	<b>Previous Commitments</b>	<b>This Commitment</b>	<b>TWDB Funds</b>	<b>Total Cost</b>
<b>Construction</b>				
Construction	\$0	\$814,000	\$814,000	\$814,000
<b>Construction Total</b>	<b>\$0</b>	<b>\$814,000</b>	<b>\$814,000</b>	<b>\$814,000</b>
<b>Basic Engineering Services</b>				
Construction Engineering	\$0	\$77,000	\$77,000	\$77,000
Design	\$94,110	\$0	\$94,110	\$94,110
Planning	\$18,700	\$0	\$18,700	\$18,700
<b>Basic Engineering Services Total</b>	<b>\$112,810</b>	<b>\$77,000</b>	<b>\$189,810</b>	<b>\$189,810</b>
<b>Special Services</b>				
Environmental	\$20,000	\$0	\$20,000	\$20,000
Inspection	\$0	\$21,600	\$21,600	\$21,600
Permits	\$200	\$0	\$200	\$200
Surveying	\$7,500	\$0	\$7,500	\$7,500
Testing	\$0	\$5,000	\$5,000	\$5,000
<b>Special Services Total</b>	<b>\$27,700</b>	<b>\$26,600</b>	<b>\$54,300</b>	<b>\$54,300</b>
<b>Contingency</b>				
Contingency	\$0	\$72,891	\$72,891	\$72,891
<b>Contingency Total</b>	<b>\$0</b>	<b>\$72,891</b>	<b>\$72,891</b>	<b>\$72,891</b>
<b>Other</b>				
Land/Easements Acquisition	\$15,000	\$0	\$15,000	\$15,000
Franchise Utility Fee	\$0	\$7,500	\$7,500	\$7,500
<b>Other Total</b>	<b>\$15,000</b>	<b>\$7,500</b>	<b>\$22,500</b>	<b>\$22,500</b>
<b>Fiscal Services</b>				
Bond Counsel	\$0	\$7,555	\$7,555	\$7,555
Financial Advisor	\$15,400	\$21,500	\$36,900	\$36,900
Fiscal/Legal	\$5,900	\$750	\$6,650	\$6,650
Issuance Costs	\$0	\$3,500	\$3,500	\$3,500
Loan Origination Fee	\$0	\$18,704	\$18,704	\$18,704
<b>Fiscal Services Total</b>	<b>\$21,300</b>	<b>\$52,009</b>	<b>\$73,309</b>	<b>\$73,309</b>
<b>Grand Total</b>	<b>\$176,810</b>	<b>\$1,050,000</b>	<b>\$1,226,810</b>	<b>\$1,226,810</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$1,050,000 TO THE CITY OF REKLAW  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$850,000 CITY OF REKLAW COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES  
OF OBLIGATION, PROPOSED SERIES 2015  
AND  
\$200,000 IN LOAN FORGIVENESS

(15- )

WHEREAS, the City of Reklaw, located in Cherokee and Rusk Counties, Texas (Reklaw) has filed an application for financial assistance in the amount of \$1,050,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the construction of certain water system improvements identified as Project No. 62575; and

WHEREAS, Reklaw seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$850,000 City of Reklaw Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2015 (together with all authorizing documents "Obligations"), and the execution of a Loan Forgiveness Agreement in an amount of \$200,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, Reklaw has offered a pledge of ad valorem taxes and surplus system revenue as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by Reklaw will be sufficient to meet all the Obligations assumed by Reklaw, 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 Reklaw 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);

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

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

A commitment is made by the TWDB to the City of Reklaw for financial assistance in the amount of \$1,050,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$850,000 Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2015 and the execution of a Loan Forgiveness Agreement in the amount of \$200,000. This commitment will expire on February 29, 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 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 Reklaw;
3. this commitment is contingent upon Reklaw'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. Reklaw, 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 Reklaw'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 Reklaw's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if Reklaw is an obligated person with respect to such bonds under SEC Rule 15c2-12;

6. the Obligations must contain a provision requiring Reklaw 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 Reklaw to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) to redeem, in inverse annual order, the Obligations owned by the TWDB; (2) deposit into the Interest and Sinking Fund or other debt service account for the payment of interest or principal on the Obligations owned by the TWDB; or (3) eligible project costs as authorized by the Executive Administrator;
8. the Obligations must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
9. loan proceeds are public funds and, as such, the Obligations must include a provision requiring that these proceeds shall be held at a designated state depository institution or other properly chartered and authorized institution in accordance with the Public Funds Investment Act, Government Code, Chapter 2256, and the Public Funds Collateral Act, Government Code, Chapter 2257;
10. loan proceeds shall not be used by Reklaw 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 Reklaw 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 Reklaw, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
11. prior to closing, Reklaw 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;
12. prior to closing, and if not previously provided with the application, Reklaw 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;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, Reklaw 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;

14. the Executive Administrator may require that Reklaw execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
15. 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

16. Reklaw'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 Reklaw when rendering this opinion;
17. Reklaw's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of Reklaw when rendering this opinion;
18. the Obligations must include a provision prohibiting Reklaw 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);
19. 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;
20. the Obligations must include a provision requiring Reklaw 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 Reklaw 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. Reklaw may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of Reklaw, provided that Reklaw 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. Reklaw 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;
21. the Obligations must include a provision prohibiting Reklaw from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
  22. the Obligations must provide that Reklaw will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
  23. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth Reklaw's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
  24. 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;

25. the Obligations must provide that neither Reklaw 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 Reklaw by the TWDB;

#### State Revolving Fund Conditions

26. Reklaw shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
27. 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. Reklaw, 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;
28. the Obligations must include a provision stating that Reklaw 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. Reklaw 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;
29. 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 Reklaw will adhere to the approved project schedule;

#### Drinking Water State Revolving Fund Conditions

30. prior to or at closing, Reklaw shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
31. 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 Reklaw 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;
32. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, Reklaw 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

33. the Obligations must contain a provision that provides as follows:
- a. if system revenues are actually on deposit in the Interest and Sinking Fund in advance of the time when ad valorem taxes are scheduled to be levied for any year, then the amount of taxes which otherwise would have been required to be levied and collected may be reduced to the extent and by the amount of revenues then on deposit in the Interest and Sinking Fund; or
  - b. if surplus revenues are based upon budgeted amounts:
    - i. the Obligations must include a requirement that Reklaw transfer and deposit in the Interest and Sinking Fund each month an amount of not less than 1/12th of the annual debt service on the Obligations until the amount on deposit in the Interest and Sinking Fund equals the amount required for annual debt service on the Obligations; further, that the ordinance authorizing the issuance of the Obligations must include a requirement that Reklaw shall not transfer any funds from Reklaw's pledged system revenues to any fund other than the Interest and Sinking Fund until such time as an amount equal to the annual debt service on the Obligations for the then-current fiscal year has been deposited in the Interest and Sinking Fund;
    - ii. the Obligations must include a requirement that for each year the Obligations are outstanding, and prior to the time taxes are to be levied for such year, Reklaw shall establish, adopt, and maintain an annual budget that provides for either the monthly deposit of sufficient surplus pledged revenues and/or tax revenues, the monthly deposit of any other legally available funds on hand at the time of the adoption of the annual budget, or a combination thereof, into the Interest and Sinking Fund for the repayment of the Obligations; and
    - iii. the Obligations must include a requirement that Reklaw shall at all times maintain and collect sufficient rates and charges in conjunction with any other legally available funds so that after payment of the costs of operating and maintaining the system, it produces revenues in an amount not less than **1.10** times debt service requirements of all outstanding Obligations of Reklaw and other obligations of Reklaw which are secured in whole or in part by the pledged revenues, for which Reklaw is budgeting the repayment of such Obligations, or Reklaw shall provide documentation which evidences the levy and collection of an ad valorem tax rate dedicated to the Interest and Sinking Fund, in conjunction with any other legally available funds, sufficient for the repayment of debt service requirements.

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

Special Conditions:

34. prior to closing, the Reklaw shall adopt and implement the water conservation program approved by the TWDB;

- 35. 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 Reklaw has the right to use the water that the project financed by the TWDB will provide;
- 36. prior to closing, Reklaw shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and
- 37. the Loan Forgiveness Agreement must include a provision stating that Reklaw shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 12<sup>th</sup> day of February, 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
<b>Baseline</b>				
<b>5-year Goal</b>				
<b>10-year Goal</b>				

**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 &lt; 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 &gt; 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 &gt; 16 connections per mile and &gt; 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 benchmarking 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.

# City of Reklaw, Cherokee & Rusk Counties

