

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: March 3, 2016

TEAM MANAGER: Clay Schultz

<b>APPLICANT</b>	Dario V. Guerra, III, doing business as Derby, Ing.
<b>TYPE OF ASSISTANCE</b>	\$140,000 Loan Forgiveness
<b>LEGAL PLEDGE</b>	N/A; 100% Loan Forgiveness

### STAFF RECOMMENDATION

Approve       No Action

### ACTION REQUESTED

Approve, by resolution, a request from Dario V. Guerra, III, doing business as Derby, Ing., (Frio County) for \$140,000 in loan forgiveness from the Drinking Water State Revolving Fund to finance construction costs associated with upgrades to the existing water system and approval of a waiver related to the entity's Water Audit and require the entity to complete and file a Water Audit prior to release of construction funds.

### PROJECT

Water System Upgrade  
Project Number 62619

### BACKGROUND

Dario V. Guerra, III doing business as Derby, Ing. (Utility), acquired the Derby Water Supply Corporation in the summer of 2014. The Utility is a small potable water system experiencing systematic problems due to aged infrastructure coupled with a lack of operational and maintenance controls and numerous Texas Commission on Environmental Quality (TCEQ) violations. In August 2014, the Utility received a commitment for the planning and design phases of a proposed project to address these issues. The requested construction phase funding will be used to upgrade the system and install a new chlorination system.

### FINANCIAL

#### Key Issues

None.

#### Principal Forgiveness

The Utility serves a population of less than 1,000, and is therefore eligible for \$140,000 in loan forgiveness from the Drinking Water State Revolving Fund's (DWSRF) Very Small Systems initiative.

<b>COMMITMENT PERIOD: THREE (3) MONTHS TO EXPIRE ON JUNE 30, 2016</b>
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Cost Savings

The Utility is saving \$140,000 in loan forgiveness.

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 DWSRF, 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 the Utility has adequate capabilities to manage its obligations.

**LEGAL**

Key Issues

None.

**CONDITIONS**

Standard Drinking Water State Revolving Fund Loan Forgiveness conditions and further conditioned as follows:

- Notification regarding sale-transfer-merger;
- Executed loan forgiveness agreement;
- Water Loss Audit submittal;
- Return surplus funds; and,
- Standard emergency discovery.

- Attachments:
1. Project Data Summary
  2. Engineering/Environmental Review
  3. Project Budget
  4. Resolution (16- )
  5. Water Conservation Review
  6. Location Map

**Project Data Summary**

<b>Authority</b>	Dario V. Guerra, III, doing business as Derby, Inc.
<b>Program</b>	Drinking Water State Revolving Fund
<b>Commitment Code</b>	LF1000483
<b>Project Number</b>	62619
<b>Intended Use Plan Year</b>	2016
<b>Fund Number</b>	951
<b>Type of Pledge</b>	N/A 100% Principal Forgiveness
<b>Revenue Pledge Level</b>	N/A
<b>Legal Description</b>	Loan Forgiveness Agreement
<b>Tax-exempt or Taxable</b>	N/A
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow Release
<b>Population</b>	87
<b>Rural</b>	Yes
<b>Water Connections</b>	30
<b>Wastewater Connections</b>	0
<b>Qualifies as Disadvantaged</b>	Yes
<b>Disadvantaged Level</b>	9
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	N/A
<b>SWIFT Project Type</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	Yes
<b>Funding Phase Code</b>	Construction
<b>Pre-Design</b>	No
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	N/A
<b>Water Rights Certification Required</b>	No
<b>Internal Risk Score</b>	N/A
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	None
<b>Moody's</b>	None
<b>Fitch</b>	None
<b>Special Issues</b>	None

**Project Team**

Team Manager	Clay Schultz
Financial Analyst	Ben Munguia
Engineering Reviewer	Augustine Tambe
Environmental Reviewer	William Alfaro
Attorney	Alexis Lorick

**Dario V. Guerra, III, dba Derby, Ing.  
62619 Derby Water System Upgrade  
Engineering and Environmental Review**

**Engineering:**Key Issues:

None.

Project Need/Description

Need: Dario V. Guerra, III, doing business as Derby, Ing. (Utility), recently acquired a small potable water system experiencing systematic problems due to aged infrastructure coupled with the lack of operational and maintenance controls and numerous Texas Commission on Environmental Quality (TCEQ) violations.

Project Description: The Utility is requesting construction funding to upgrade its water system. The upgrade will include the construction of a new chlorination system for effective disinfection, upgrades to the service pumps to increase water pressure in the system, replacement of 30 water meters to reduce water loss, and upgrades to the water well. These upgrades will help improve the water system and bring it into compliance with TCEQ drinking water requirements.

**Project****Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Design Phase Complete	12/31/2015
Engineering Feasibility Report Completion (End of Planning Phase)	12/31/2015
Closing	6/15/2016
Start of Construction	5/1/2016
Construction Completion	12/31/2016

**Environmental  
Section:**Key Issues:

None.

Environmental Summary:

A Categorical Exclusion (CE) for this project was issued on October 30, 2013. As required by 31 Texas Administrative Code (TAC) §371.41, Subchapter E, environmental review of the proposed project has been completed. The proposed project is in compliance with the National Environmental Policy Act.



**Project Budget Summary**  
 Dario V. Guerra, III, dba Derby Ing.  
 62619 - Derby Water System Upgrade

Budget Items	Previous Commitments	This Commitment	TWDB Funds	Total
<b>Construction</b>				
Construction	\$0.00	\$110,000.00	\$110,000.00	\$110,000.00
<b>Subtotal for Construction</b>	<b>\$0.00</b>	<b>\$110,000.00</b>	<b>\$110,000.00</b>	<b>\$110,000.00</b>
<b>Basic Engineering Services</b>				
Construction Engineering	\$0.00	\$4,000.00	\$4,000.00	\$4,000.00
Design	\$18,000.00	\$0.00	\$18,000.00	\$18,000.00
Planning	\$36,000.00	\$0.00	\$36,000.00	\$36,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$54,000.00</b>	<b>\$4,000.00</b>	<b>\$58,000.00</b>	<b>\$58,000.00</b>
<b>Special Services</b>				
Application	\$0.00	\$4,000.00	\$4,000.00	\$4,000.00
Inspection	\$0.00	\$5,000.00	\$5,000.00	\$5,000.00
Testing	\$0.00	\$2,000.00	\$2,000.00	\$2,000.00
<b>Subtotal for Special Services</b>	<b>\$0.00</b>	<b>\$11,000.00</b>	<b>\$11,000.00</b>	<b>\$11,000.00</b>
<b>Other</b>				
Administration	\$0.00	\$5,000.00	\$5,000.00	\$5,000.00
<b>Subtotal for Other</b>	<b>\$0.00</b>	<b>\$5,000.00</b>	<b>\$5,000.00</b>	<b>\$5,000.00</b>
<b>Contingency</b>				
Contingency	\$0.00	\$10,000.00	\$10,000.00	\$10,000.00
<b>Subtotal for Contingency</b>	<b>\$0.00</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>	<b>\$10,000.00</b>
<b>Total</b>	<b>\$54,000.00</b>	<b>\$140,000.00</b>	<b>\$194,000.00</b>	<b>\$194,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE  
TO DARIO V. GUERRA, III, DOING BUSINESS AS DERBY, ING.,  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH A LOAN IN THE AMOUNT OF \$140,000  
WITH 100% LOAN FORGIVENESS

(16- )

WHEREAS, Dario V. Guerra, III, doing business as Derby, Ing., located in Frio County (Utility), has filed an application for financial assistance in the amount of \$140,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the construction of certain water system improvements identified as Project No. 62619; and

WHEREAS, the Utility, seeks financial assistance from the Texas Water Development Board (TWDB) in the amount of \$140,000 with 100% to be forgiven, as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, Texas Water Code (TWC) § 16.053(j)(3) authorizes the Board to provide financial assistance to the Utility after finding that the Utility has completed and filed a Water Loss Audit pursuant to the requirements outlined in 31 TWC § 16.0121; and

WHEREAS, the Utility has not yet completed and submitted a Water Loss Audit as required by 31 TWC § 16.0121 and 31 Texas Administrative Code (TAC) § 358.6; and

WHEREAS, the Utility requested on February 1<sup>st</sup>, 2016 that the Board waive its duty to find that it has completed and submitted a Water Loss Audit; and

WHEREAS, TWDB staff has reviewed the Utility's request and based on limited water use data available to the Utility at the time of this commitment, staff recommends a waiver of the Utility's duty to complete and submit a Water Loss Audit at this time; and

WHEREAS, the TWDB hereby finds:

1. that no debt obligations are to be assumed by the Utility, for the loan and no taxes or revenues are required to be pledged by the Utility;
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 Utility, 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 based on the submissions of the Utility related to the status of its Water Loss Audit for 2015, conditions exist that warrant the Board waiving its finding pursuant to 16 TWC § 16.053(j)(3) that a Water Loss Audit for the Utility has been completed and filed;
6. that the Utility, 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; and
7. that the Executive Administrator issued a Categorical Exclusion on October 30, 2013, 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:

1. for the reasons stated above, the TWDB hereby waives the Utility's requirements related to its Water Loss Audit to instead require the Utility to complete and file a Water Loss Audit prior to release of construction funds in accordance with Special Condition No. 3; and
2. a commitment is made by the TWDB to Dario V. Guerra, III, doing business as Derby, Ing. for financial assistance in the amount of \$140,000 from the Drinking Water State Revolving Fund with 100% of the loan forgiven. This commitment will expire on June 30, 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 Utility'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 Utility, 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 Utility, 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 Utility, 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 Utility, 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 Utility, 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 Utility, execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

#### State Revolving Fund Conditions

9. the Utility, 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 Utility must ensure that 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 Utility, 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 Utility 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 Utility, will adhere to the approved project schedule;
13. the Loan Forgiveness Agreement must contain a covenant that the Utility, 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 release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the Utility 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 Utility must notify the Executive Administrator prior to taking any actions to alter its legal status in any manner, such as by a sale-transfer-merger with another retail public utility;
2. prior to closing, the Utility shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
3. in accordance with 31 TAC § 371.72, prior to the release of construction funds, the Utility shall submit a Water Loss Audit conducted in accordance with the applicable provisions in TWC § 16.0121 and 31 TAC § 358.6;
4. the Loan Forgiveness Agreement must include a provision stating that the Utility, shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and
5. the Utility, 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 3<sup>rd</sup> day of March, 2016.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech K. Bruun, 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:**

Total water loss (GPCD): \_\_\_\_\_      Total water loss (percent): \_\_\_\_\_      Wholesale Water  
 Total no. of connections: \_\_\_\_\_      Length of mains (miles): \_\_\_\_\_      Connections per mile: \_\_\_\_\_  
 If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (ILI): \_\_\_\_\_

**WATER LOSS THRESHOLDS:**

	Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Threshold Gallons per connection per day	Real Threshold Gallons per mile per day	Real Threshold Gallons per connection per day
If population ≤ 10K, connections/mile < 32 :						
If population ≤ 10K, connections/mile ≥ 32 :						
If population > 10K :						

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 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.

**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.

**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.

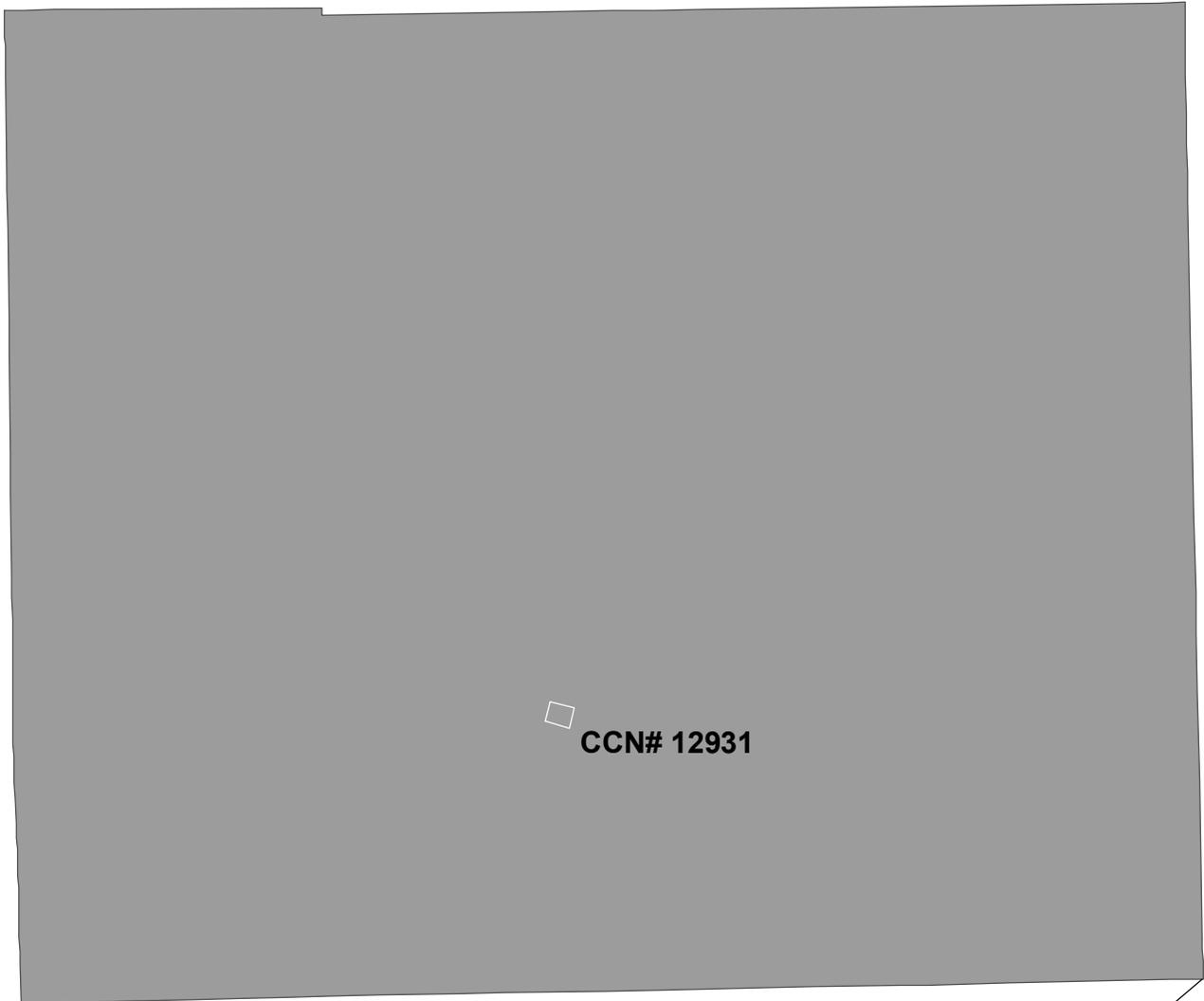
**Total baseline GPCD** is the amount of all water purchased or produced by the utility divided by the service area population and then divided by 365.

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

**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 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.

# Derby, ING, Frio County



CCN# 12931

