

AGENDA ITEM MEMO

BOARD MEETING DATE: June 9, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, Deputy Executive Administrator

FROM: Mark Wyatt, Director, Program Administration & Reporting

SUBJECT: Amendment to the SFY 2022 TCEQ Set-Aside Contract

ACTION REQUESTED

Consider adopting the amended State Fiscal Year 2022 Drinking Water State Revolving Fund Intended Use Plan and authorizing the Executive Administrator to execute an amendment to the State Fiscal Year 2022 Drinking Water State Revolving Fund Set-Aside Contract between the Texas Water Development Board and the Texas Commission on Environmental Quality.

BACKGROUND

On October 7, 2021, the Board authorized the Executive Administrator to execute an inter-agency contract between the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ) governing the use of certain Drinking Water State Revolving Fund (DWSRF) capitalization grant funds for set-aside activities. The contract reflects the set-aside allocations included in the State Fiscal Year (SFY) 2022 Intended Use Plan (IUP) and set-aside activities described in SFY 2022 Set-Aside Work Plans prepared by the TCEQ and submitted for approval to the United States Environmental Protection Agency.

This contract amendment would increase from \$1,800,000 to \$4,100,000 the amount of the Federal Fiscal Year (FFY) 2021 capitalization grant that may be used in SFY 2022 for TCEQ activities under Local Assistance and Other State Programs set-aside category. The total TCEQ set-aside amount from the FFY 2021 grant would increase accordingly from \$12,144,240 to \$14,444,240. In addition, the program received reallocated FFY 2029 funds from another state, which are also part of the set-aside contract. No changes would be made to the set-asides from the reallocated FFY 2019 grant funds.

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

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Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

On January 12, 2022, the TWDB posted a draft amended SFY 2022 DWSRF IUP reflecting these revisions in the set-aside amounts for public comment. The comment period ended on January 26, 2022, and no comments were received.

KEY ISSUES

The amended contract will cover the TCEQ's use of DWSRF set-aside funds in SFY 2022 from the FFY 2021 capitalization grant funds, along with reallocated FFY 2019 funds from another state.

FFY 2021 funds:

State Program Management Set Aside from FFY 2021 grant	\$8,620,200
Small Systems Technical Assistance Set Aside from FFY 2021 grant	\$1,724,040
Local Assistance and Other State Programs Set Aside from FFY 2021 grant	\$4,100,000
Total TCEQ Set-Aside amount from FFY 2021 grant	\$14,444,240

FFY 2019 reallocated funds from another state:

State Program Management Set Aside from FFY 2019 reallocated funds	\$81,300
Small Systems Technical Assistance Set Aside from FFY 2019 reallocated funds	\$16,260
Total TCEQ Set-Aside amount from FFY 2019 reallocated funds	\$97,560

The SFY 2022 DWSRF IUP would be amended to reflect these revisions in the set-aside amounts. No other changes would be made to the IUP.

RECOMMENDATION

The Executive Administrator recommends adoption of the amended SFY 2022 DWSRF IUP and authorizing the execution of the attached amendment to the contract with the TCEQ to administer the set-aside funds, with the ability to make minor revisions to both that do not alter the underlying content.

Attachments:

1. Recommended Amended SFY 2022 DWSRF IUP
2. Draft Amended Set-Aside Contract between the TWDB and the TCEQ

**Drinking Water State Revolving Fund
Amended SFY 2022 Intended Use Plan**

Effective Date - 6/9/2022

IV. Significant Program Changes

Significant program changes from the previous year's IUP are highlighted below.

1. As mentioned in the published SFY 2022 Project Information Form (PIF) Guidance, establishment of a new interest rate reduction methodology. The interest rate will be a percentage reduction from the Thomson Reuters Municipal Market Data (MMD) rate adjusted for yield to maturity that is applicable to the entity's rating, with non-rated entities using the Baa rate, as follows:
 - (a) Equivalency projects: 35% reduction
 - (b) Non-Equivalency projects: 30% reduction (Sections V and X).
2. Emergency Preparedness – for Severe Weather – allocation of \$3,000,000 in principal forgiveness for the preparation of an emergency preparedness evaluation/audit plan. Entities could receive funding to determine compliance with statutory and regulatory standards of emergency operations that directly affect operation of a public water system during an extended power outage from severe weather that impacts the system. The maximum amount available for a public water system is \$75,000. The evaluation/audit must be submitted to TWDB (Section VI).
3. Increased the amount of the FFY 2021 capitalization grant that may be used in SFY 2022 for TCEQ Set-Aside activities under Local Assistance and Other State Programs from \$1,800,000 to \$4,100,000. The total TCEQ set-aside amount from the FFY 2021 grant increased accordingly from \$12,144,240 to \$14,444,240 (Sections V and IX).

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V. Amount Available

4. Allocation of Principal Forgiveness:

DWSRF SFY 2022 - Grants totaling \$87,015,000		% of Grant
Maximum & Minimum - Principal Forgiveness		
Minimum (Disadvan. Comm.)	\$5,220,900	6%
Minimum (Any DWSRF-eligible recipient)	\$12,230,880	14%
Minimum (Total)	\$17,451,780	20%
Optional Additional Amount for Disadvan. Comm.	\$25,234,350	29%
Maximum	\$42,686,130	49%
Current Allocation of Principal Forgiveness		
Disadvantaged Community (Minimum of \$5,220,900)	\$16,000,000	18%
Disadvantaged Community - for Small / Rural only	\$2,000,000	2%
Subsidized Green (incl. Water Conservation)	\$2,000,000	2%
Very Small Systems	\$2,000,000	2%
Very Small Systems - "Securing Safe Water" Initiative	\$1,000,000	1%
Emergency Preparedness - Severe Weather	\$3,000,000	3%
Urgent Need - "Securing Safe Water" Initiative / Contaminants	\$2,000,000	2%
Urgent Need - Other	\$2,000,000	2%
Total Currently Allocated	\$30,000,000	34%
<i>Additional amount that could be allocated to principal forgiveness</i>	<i>\$12,686,130</i>	<i>15%</i>
Total Breakdown		
Total Principal Forgiveness Allocated to Projects	\$30,000,000	34%
TWDB Administration & Technical Assistance-FFYs 2021 & 2019	\$3,480,600	4%
TCEQ-FFYs 2021 and 2019	\$12,241,800 \$14,541,800	14% 17%
Loans/Bonds	\$41,292,600 \$38,992,600	48% 45%
Total	\$87,015,000	100%

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IX. Set-Asides

Federal regulations allow states to set aside up to 31 percent of the capitalization grant funds for purposes other than financing construction projects for water systems. The set asides for SFY 2022 will be allocated as follows: 4 percent for the TWDB for administration/technical assistance, 10 percent for TCEQ for State Program Management, 2 percent for TCEQ for Small Systems Technical Assistance, and \$4,100,000 (approximately 4.8 percent from the FFY 2021 grant) for TCEQ for Local Assistance and Other State

Programs. Set-asides from the reallocated FFY 2019 funds from another state totaling \$813,000 are included as well.

B. Texas Commission on Environmental Quality Activities

Funds for TCEQ Set-Aside activities from the FFY 2021 capitalization grant totaling \$14,444,240 may be used in SFY 2022. Remaining funds from the previous DWSRF grant, except for funds for Local Assistance and Other State Programs, may also be used in SFY 2022.

State Program Management Set Aside from FFY 2021 grant	\$8,620,200
Small Systems Technical Assistance Set Aside from FFY 2021 grant	\$1,724,040
Local Assistance and Other State Programs Set Aside from FFY 2021 grant	\$4,100,000
Total TCEQ Set-Aside amount from FFY 2021 grant	\$14,444,240

FFY 2019 reallocated funds from another state may be used in SFY 2022 as follows:

State Program Management Set Aside from FFY 2019 reallocated funds	\$81,300
Small Systems Technical Assistance Set Aside from FFY 2019 reallocated funds	\$16,260
Total TCEQ Set-Aside amount from FFY 2019 reallocated funds	\$97,560

A detailed description of SFY 2022 activities may be found in TCEQ's DWSRF Set-Aside Work Plans. Activities are expected to be completed by August 31, 2022.

Appendix A. Public Review and Comment

Public Participation in the Development of the Intended Use Plan

Public participation is an important and required component of the IUP development process. The TWDB takes seriously its responsibility in administering these funds and considers public input necessary and beneficial.

A. Notice

To seek public comment, the proposed amendment to the IUP was made available for a 14-day public comment period. The proposed amendments to the SFY 2022 DWSRF IUP were announced as follows:

- Public notification of the proposed amended IUP and the public comment period was posted on the TWDB website at www.twdb.texas.gov.
- The notice was sent via email to all entities that submitted projects for the SFY 2022 IUP and everyone who had signed up to receive TWDB email notifications.
- A copy of the proposed amended IUP was sent to EPA.

B. Comment

Comments were accepted via the following options from January 12, 2022, until 5:00 P.M. on January 26, 2022.

1. Emailing comments to the following electronic mail address and specifying in the subject line “*DWSRF comments*”.

iupcomments@twdb.texas.gov.

2. Mailing comments to the following postal mail address:

Mr. Mark Wyatt
Director, Program Administration and Reporting
Texas Water Development Board
P.O. Box 13231
Austin, TX 78711-3231

In accordance with federal requirements, all comments on the proposed amended IUP were responded to on an individual basis.

C. Effective Date

The amended SFY 2022 DWSRF IUP will be considered final on the effective date.

D. Documentation

The final amended IUP will be formally submitted to the EPA and posted on the TWDB website.

Appendix B. Projected Sources and Uses of Funds
 From 6/1/2021 to 8/31/2022
 (As of May 31, 2021)

SOURCES:

FFY 2021 Federal Capitalization Grant and reallocated FFY 2019 funds of \$813,000	\$87,015,000
State Match - for FFY 2021 Federal Capitalization Grant and reallocated funds	\$17,403,000
Undrawn previous grants	\$24,420,080
Principal Repayments	\$90,850,704
Interest Repayments	\$23,257,386
Investment Earnings on Funds	\$324,717
Cash available	\$279,089,839
Additional net leveraging bond proceeds (based on "Projects to be Funded")	\$76,092,617

TOTAL SOURCES: **\$598,453,343**

USES:

Set-Asides from FFY 2021 Grant and reallocated FFY 2019 funds:

TWDB Administrative Set-Aside	\$3,480,600
Total TWDB Set-Aside:	\$3,480,600

TCEQ Small Systems Technical Assistance Program Set-Aside	\$1,740,300
TCEQ Texas State Management Program Set-Aside	\$8,701,500
TCEQ Local Assistance and Other State Programs Set-Aside	\$4,100,000
Total TCEQ Set-Asides	\$14,541,800

Set-Asides from prior grant \$12,943,072

Projects to be Funded:

SFY 2022 IUP Commitments – Additional Subsidization	\$30,000,000
SFY 2022 IUP Commitments – Bonds/Loans (Available Amount less Addit. Subsidy)	\$120,000,000
Total Projects To Be Funded - SFY 2022:	\$150,000,000

Projects with Commitments/Apps Being Processed

Commitments ¹	\$267,277,500
Applications	\$71,509,050
Installment closings	\$1,750,000
Total Projects with Commitments or being processed:	\$340,536,550

Debt Service:

Principal Payments	\$48,376,544
Interest Payments	\$28,574,777
Total Debt Service:	\$76,951,321

TOTAL USES: **\$598,453,343**

NET SOURCES (USES): **\$0**

Fees are not deposited into the Fund; therefore, based on EPA guidance they are not included in the Sources and Uses for the Fund.
 1. Excludes multi-year commitments closing after SFY 2022

TWDB Contract No. 2221902617
TCEQ Contract No. 582-22-30745

DRINKING WATER STATE REVOLVING FUND PROGRAM
SET-ASIDE ACTIVITIES CONTRACT
BETWEEN
THE TEXAS WATER DEVELOPMENT BOARD
AND
THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AMENDMENT NO. 1

This Contract, previously executed on January 21, 2022, is hereby amended as follows:

1. Article I, RECITALS, paragraph 1.3, is amended as follows:

1.3. TCEQ, as the State’s primacy regulatory agency, is responsible for implementing the drinking water regulatory scheme established by the SDWA and for enforcing the national drinking water standards set by EPA. To effectuate these goals, TCEQ administers the 10% set-aside for the State Program Management (SPM), the 2% set-aside for the Small System Technical Assistance (SSTA) and a portion not to exceed \$4,100,000 of the most current 15% set-aside funds for Local Assistance (LA) programs. These activities are eligible under the SDWA for funds set aside from the DWSRF capitalization grant.

2. Article II, TCEQ RESPONSIBILITIES, paragraph 2.1.3, is amended as follows:

2.1.3. LOCAL ASSISTANCE AND OTHER STATE PROGRAMS SET-ASIDE.

TCEQ agrees to engage in such activities for which TCEQ may use up to \$4,100,000 of the additional eligible 15% Set-Aside funds of the capitalization grant pursuant to 42 U.S.C. 300j-12(k)(2) for local assistance and other State programs. TCEQ agrees to perform or subcontract to perform the tasks identified in the Local Assistance and Other State Programs Set-Aside Work Plan (hereinafter referred to as the “LA Work Plan”), including all changes or amendments thereto, on a first-in, first-out (FIFO) basis. The LA Work Plan for each SFY of the Contract is incorporated into this Contract by reference.

TCEQ agrees to perform or subcontract to perform the tasks identified in the LA Work Plan, including the following:

A. Provide financial, managerial, and technical assistance to any public water system as part of a capacity development strategy as authorized by 42 U.S.C. 300j-12(k)(2)(C);

B. Upon request of the TWDB, provide financial, managerial, and technical assessment, furnishing the TWDB with a report on DWSRF applicants within forty-five (45) to sixty (60) days from receipt of the TWDB request, and expeditiously provide a similar assessment and report on projects designated as emergency by TWDB;

C. Complete source water protection activities to assist in the implementation of programs designed to provide source water protection and wellhead protection within the State;

D. Coordinate with TWDB to effect sharing of electronic data no less than quarterly, but no more than monthly;

E. Provide regulatory oversight of water conservation and reclamation districts and promote regional water strategies;

F. Enhance the Capacity Development Strategy requirement of the SDWA through extended outreach by 1) sharing written materials, as provided by TWDB, relating to financial assistance and eligibility requirements to potential DWSRF applicants, and 2) providing DWSRF application assistance to potential applicants through third-party entities or contractors;

G. Increase coordination of information and outreach activities with TWDB in an effort to reduce compliance violations and ensure safe drinking water for the citizens of the State, including early identification of systems repeatedly non-compliant with SDWA provisions; and

H. Make records of work performed as identified in the LA Work Plan available to TWDB upon request.

3. Article III, TWDB RESPONSIBILITIES, paragraph 3.3, is amended as follows:

3.3 REIMBURSEMENT OF EXPENSES FOR LOCAL ASSISTANCE AND OTHER STATE PROGRAMS. For performing the tasks identified in the LA Work Plan, TWDB agrees to provide to TCEQ an amount not to exceed the LA Work Plan budget for actual expenses incurred by TCEQ in performing the tasks identified in the LA Work Plan, according to the terms of this Contract. These expenses must not exceed \$4,100,000 (\$4.1 million) plus any remaining funds designated as ULO of the 15% Local Assistance and Other State Programs Set-Aside for each SFY of the LA Work Plan from the EPA. TWDB is under no obligation to pay TCEQ until the TWDB has received the most current awarded FFY capitalization grant funds from the EPA. TCEQ agrees to provide the TWDB with an updated budget if additional projects are to be added to the LA Work Plan.

The effective date of this Amendment is the date of last signature. All other terms and conditions of this Contract remain in effect.

IN WITNESS WHEREOF, the parties hereto cause this amendment to be duly executed.

**TEXAS WATER DEVELOPMENT
BOARD**

**TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

Jeff Walker
Executive Administrator

L'Oreal W. Stepney, P.E.
Deputy Executive Director

Date: _____

Date: _____