

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: March 26, 2015

TEAM MANAGER: Mireya Loewe

<b>APPLICANT</b>	Agua Special Utility District
<b>TYPE OF ASSISTANCE</b>	\$8,195,000 Loan
<b>LEGAL PLEDGE</b>	First Lien on the Gross Revenues of the Waterworks and Sewer System

**STAFF RECOMMENDATION**

Approve                       No Action

**ACTION REQUESTED**

Approve, by resolution, a request from the **Agua Special Utility District (Hidalgo County)** for an \$8,195,000 loan from the Clean Water State Revolving Fund to finance the planning, acquisition, design, and construction of a project to provide first-time wastewater service to the City of Palmview and surrounding areas.

**PROJECT**

Eastern Wastewater System  
Project Number 10365

**FINANCIAL SUMMARY**

Risk Score:	2B
Pledge for Repayment:	Gross Revenues
Proposed Repayment Method:	Gross Revenues
Assessed Value Trend:	N/A
Operating Trends:	Stable
Rate Increase Needed:	No
Unrestricted Net Assets:	Six months of expenses

<b>COMMITMENT PERIOD: ONE (1) YEAR TO EXPIRE ON MARCH 31, 2016</b>
--

## **FINANCIAL**

### Key Issues

The Agua Special Utility District (District) had previously received \$2,594,293 in TWDB funding for the planning, acquisition, and design of the project, which expired on December 31, 2014. The District currently has outstanding \$4,750,000 in closed commitments (\$2.375M loan and \$2.375M loan forgiveness) from the Clean Water State Revolving Fund (CWSRF) and a \$29,300,000 commitment, pending closing, from the Economically Distressed Areas Program (EDAP) to complete the project.

At the time the TWDB issued these commitments, the project scope consisted of the construction of a collection system in the City of Palmview (project area) and a 2.5 million gallons per day (MGD) wastewater treatment plant (WWTP). Due to issues with the location of the proposed WWTP, the project scope has now changed to the construction of the same collection system in the project area; planning, acquisition, design, and construction of a lift station (on the property where the WWTP was to be located) and a force main to transport the wastewater from the project area to the City of Mission's (City) existing WWTP for treatment; and a \$3.5 million contribution from the District to the City for the expansion of the City's WWTP, which would guarantee the District 1.0 MGD in treatment capacity.

The current \$8.195 million funding request will complete the new total project cost of \$45,479,293, as detailed in Attachment 4. The District plans to start immediately on the planning, environmental clearance, and design of the conveyance system. The District intends to fund this work with the outstanding CWSRF commitments (L1000143 and LF1000144). The District plans to begin construction of the collection system as soon as the new Finding of No Significant Impact (FNSI) is issued for the entire project.

### Pledge and Repayment

The District is pledging a first lien on the gross revenues of the waterworks and sewer system. Current rates are sufficient for the repayment of the existing and proposed debt service. The project area will have separate and different wastewater rates than the rest of the system to support repayment of the proposed debt. The District currently estimates the average monthly water and sewer bill to be approximately \$76.12 for the customers that will be served with this project.

### Cost Savings

Based on a 30-year maturity schedule and current interest rates, the District could save approximately \$2,053,000 over the life of the financing by utilizing TWDB funding for this loan.

### Internal Risk Score

The District is assigned a risk score of 2B. A risk score of 2B means the District's repayment capacity is adequate. The District's earnings trends and coverage ratios, while stable, may become more susceptible to moderate changes in circumstances and economic conditions than the higher rated obligations. Certain risk elements may exist that suggest susceptibility to future impairment, if not managed.

The District's water connections have remained constant at average of 14,204 over the past four years. Along with the stable water connections, the District's debt per capita is high at \$3,227 including proposed debt. The District currently reports six months of annual expense in unrestricted assets. The District's top ten water and wastewater customers represent less than 10% of the system's total revenues, which indicates that the District's revenues are not concentrated and the District's debt service requirements are not overly-dependent on a few users. The unemployment rate of 10.8% is higher than the State's rate of 4.1%.

The District's median household income of \$34,146 is below the median for the State overall of \$51,900. The District's existing customers currently pay 1.9% of their annual income for water and sewer service. This is in line with the TWDB's benchmark of 2% for two services. The District estimates that new customers to be served with the current project will pay 2.7% of their annual income for water and sewer service.

The District's stable operating trends and water connections, non-reliance on top-ten water and wastewater customers, and a low household cost factor mitigate the high debt per capita, the low-median household income, and unemployment rates, supporting the risk score assigned.

## **LEGAL**

### Key Issues

None.

## **CONDITIONS**

Standard Clean Water State Revolving Fund, tax-exempt, and revenue conditions and further conditioned as follows:

- Pre-design funding;
- Notice of conversion;
- Notice of conveyance
- Schedule of environmental review; and
- No release of construction funds prior to issuance of FNSI.

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>	Agua Special Utility District
<b>Program</b>	Clean Water State Revolving Fund
<b>Commitment Code</b>	L1000423
<b>Project Number</b>	10365
<b>Intended Use Plan Year</b>	2015
<b>Fund Number</b>	651
<b>Type of Pledge</b>	2
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	\$8,195,000 Waterworks and Sewer System Revenue Bonds, Proposed Series 2015
<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>	10,008
<b>Rural</b>	No
<b>Water Connections</b>	13,760
<b>Wastewater Connections</b>	1,752
<b>Qualifies as Disadvantaged</b>	Yes
<b>Disadvantaged Level</b>	9
<b>Clean Water State Revolving Fund Type</b>	Equivalency
<b>Financial, Managerial, and Technical Review Complete</b>	No
<b>Phase Committing</b>	Planning, Acquisition, Design and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with Water Plan</b>	N/A
<b>Water Conservation Plan</b>	Adopted
<b>Water Rights Certification Required</b>	N/A
<b>Internal Risk Score</b>	2B
<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**

Team Manager	Mireya Loewe
Financial Analyst	Javier Pena
Engineering Reviewer	Augustine Tambe
Environmental Reviewer	Nicki Hise
Attorney	Joe Reynolds

**ISSUE BEING EVALUATED**  
**Agua Special Utility District**  
**\$8,195,000 Waterworks and Sewer System Revenue Bonds, Proposed Series 2015**

Dated Date	06/30/15	Source: SRF
Delivery Date	06/30/15	Rate: 1.07%
First Interest	12/30/15	Insurance: None
First Principal	06/30/16	Case: Revenue
Last Principal	06/30/44	Admin. Fee Payment Date: 6/30/2015
Fiscal Year End	12/31	Administrative Fee: \$148,854

RATES ARE FOR ILLUSTRATION PURPOSES ONLY AND ARE SUBJECT TO CHANGE

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	----- THIS \$8,195,000 ISSUE -----				TOTAL DEBT SERVICE	COVERAGE BEING REQUIRED	ACTUAL COVERAGE
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT			
2015	3,279,575	1,733,852	-	1.07%	43,843	43,843	1,777,695	1.25	1.84
2016	3,279,575	1,768,731	-	1.07%	87,687	87,687	1,856,418	1.25	1.77
2017	3,279,575	1,835,455	250,000	1.07%	86,349	336,349	2,171,804	1.25	1.51
2018	3,279,575	1,831,249	245,000	1.07%	83,701	328,701	2,159,950	1.25	1.52
2019	3,279,575	1,831,092	250,000	1.07%	81,053	331,053	2,162,145	1.25	1.52
2020	3,279,575	1,839,885	255,000	1.07%	78,351	333,351	2,173,236	1.25	1.51
2021	3,279,575	1,837,039	255,000	1.07%	75,622	330,622	2,167,661	1.25	1.51
2022	3,279,575	1,832,697	255,000	1.07%	72,894	327,894	2,160,591	1.25	1.52
2023	3,279,575	1,842,231	260,000	1.07%	70,139	330,139	2,172,370	1.25	1.51
2024	3,279,575	1,840,426	260,000	1.07%	67,357	327,357	2,167,783	1.25	1.51
2025	3,279,575	1,842,649	260,000	1.07%	64,575	324,575	2,167,224	1.25	1.51
2026	3,279,575	1,838,713	260,000	1.07%	61,793	321,793	2,160,506	1.25	1.52
2027	3,279,575	1,838,842	275,000	1.07%	58,930	333,930	2,172,772	1.25	1.51
2028	3,279,575	1,832,791	275,000	1.07%	55,988	330,988	2,163,779	1.25	1.52
2029	3,279,575	1,846,003	280,000	1.07%	53,019	333,019	2,179,022	1.25	1.51
2030	3,279,575	1,842,741	280,000	1.07%	50,023	330,023	2,172,764	1.25	1.51
2031	3,279,575	1,838,499	285,000	1.07%	47,000	332,000	2,170,499	1.25	1.51
2032	3,279,575	1,838,285	295,000	1.07%	43,897	338,897	2,177,182	1.25	1.51
2033	3,279,575	1,837,048	295,000	1.07%	40,740	335,740	2,172,788	1.25	1.51
2034	3,279,575	1,768,427	300,000	1.07%	37,557	337,557	2,105,984	1.25	1.56
2035	3,279,575	1,475,524	310,000	1.07%	34,294	344,294	1,819,818	1.25	1.80
2036	3,279,575	1,322,997	315,000	1.07%	30,950	345,950	1,668,947	1.25	1.97
2037	3,279,575	874,209	315,000	1.07%	27,579	342,579	1,216,788	1.25	2.70
2038	3,279,575	806,818	330,000	1.07%	24,129	354,129	1,160,947	1.25	2.82
2039	3,279,575	807,022	330,000	1.07%	20,598	350,598	1,157,620	1.25	2.83
2040	3,279,575	812,763	340,000	1.07%	17,013	357,013	1,169,776	1.25	2.80
2041	3,279,575	558,049	345,000	1.07%	13,348	358,348	916,397	1.25	3.58
2042	3,279,575	492,031	350,000	1.07%	9,630	359,630	851,661	1.25	3.85
2043	3,279,575	270,144	360,000	1.07%	5,832	365,832	635,976	1.25	5.16
2044	3,279,575	271,465	365,000	1.07%	1,953	366,953	638,418	1.25	5.14
		\$ 44,207,677	\$ 8,195,000		\$ 1,445,838	\$ 9,640,838	\$ 53,848,515		

AVERAGE (MATURITY) LIFE	16.49 YEARS
NET INTEREST RATE	1.070%
COST SAVINGS	\$2,053,000
AVERAGE ANNUAL REQUIREMENT	\$1,794,950

**Agua SUD**  
**Engineering and Environmental Review**

**Engineering:**Key Issues

None

Project Need / Description

Need: The City of Palmview and surrounding communities of Abram, Chihuahua, Perezville, and Citrus City (the Eastern area) are within the Agua Special Utility District's (District) service area and do not have a centralized wastewater disposal system. Wastewater disposal in the area is through the use of septic tanks with drain fields and other types of on-site disposal systems that present serious health issues.

Project Description: This is the first phase of a multi-phase wastewater system to provide first-time wastewater service to the entire Eastern area. The planning and design of the collection system for the entire Eastern area were completed with previous funding. Due to funding limitations, the first phase will provide first-time wastewater services to approximately 1,752 homes within the City of Palmview (the project area). The proposed first-phase collection system includes the construction of gravity sewer lines, lift stations, and force main lines. In addition, the project includes planning, acquisition, design, and construction of a conveyance system to transport the flows from the project area and treat them at the City of Mission's (City) existing wastewater treatment plant (WWTP). The conveyance system will include a lift station, a transmission force main line, pump controls, and other necessary equipment. Through an inter-local agreement, the District will contribute \$3.5 million to the City's WWTP expansion project and obtain one million gallons per day (MGD) of treatment capacity at the City's WWTP.

Project Schedule

<b>Project Task</b>	<b>Schedule Date</b>
Closing	6/30/2015
Design Phase Complete	12/31/2015
Start of Construction	5/31/2016
Construction Completion	4/30/2017

**Environmental:**Key Issues

Although a Finding of No Significant Impact (FNSI) for the collection system portion of the proposed project had been issued by the Environmental Protection Agency and adopted by the TWDB on April 26, 2013, construction funding for any project component will not be released until environmental review is completed and a favorable FNSI has been issued for all remaining project components in order to ensure that no portion of the project is constructed as a stranded facility, as individual project components are dependent upon each other in order for the proposed facilities to operate properly.

### Environmental Summary

Pursuant to the requirements of 31 TAC §375, all financial assistance shall be conditioned to read that funding for acquisition, design, and construction costs for the proposed project will not be released until the environmental review has been completed and a favorable Finding of No Significant Impact (FNSI) has been issued by the Director of Regional Water Planning & Development. A subsequent Affirmation of Commitment will be necessary for this loan in order to comply with the National Environmental Policy Act.

**Agua SUD - Eastern Wastewater Project Uses of Funds**

Uses	Previous PAD Expenditures	Construction Collection System	PAD & Construction LS & Force Main	Contribution to Mission	Total Construction Cost	Total Project Cost
<b>Construction</b>						
Construction		\$23,961,841	\$5,200,000	\$3,500,000	\$32,661,841	\$32,661,841
<b>Subtotal Construction</b>	<b>\$0</b>	<b>\$23,961,841</b>	<b>\$5,200,000</b>	<b>\$3,500,000</b>	<b>\$32,661,841</b>	<b>\$32,661,841</b>
<b>Basic Engineering Fees</b>						
Construction Engineering	\$0	\$300,000	\$80,000	\$0	\$380,000	\$380,000
Design	\$965,000	\$0	\$300,000	\$0	\$300,000	\$1,265,000
Planning +	\$136,684	\$0	\$60,000	\$0	\$60,000	\$196,684
<b>Subtotal Basic Engineering Fees</b>	<b>\$1,101,684</b>	<b>\$300,000</b>	<b>\$440,000</b>	<b>\$0</b>	<b>\$740,000</b>	<b>\$1,841,684</b>
<b>Special Services</b>						
Application	\$0	\$0	\$15,000	\$0	\$15,000	\$15,000
Environmental	\$25,153	\$0	\$90,000	\$0	\$90,000	\$115,153
Geotechnical	\$30,000	\$0	\$20,000	\$0	\$20,000	\$50,000
Inspection	\$0	\$452,000	\$180,000	\$0	\$632,000	\$632,000
O&M Manual	\$0	\$50,000	\$30,000	\$0	\$80,000	\$80,000
Permits	\$46,456	\$70,000	\$15,000	\$0	\$85,000	\$131,456
Surveying	\$20,000	\$0	\$60,000	\$0	\$60,000	\$80,000
Testing	\$0	\$211,000	\$30,000	\$0	\$241,000	\$241,000
<b>Subtotal Special Services</b>	<b>\$121,609</b>	<b>\$783,000</b>	<b>\$440,000</b>	<b>\$0</b>	<b>\$1,223,000</b>	<b>\$1,344,609</b>
<b>Other</b>						
Administration	\$34,627	\$30,000	\$24,000	\$0	\$54,000	\$88,627
Land/Easements Acquisition	\$1,940,377	\$874,779	\$90,000	\$0	\$964,779	\$2,905,156
Flood Plain Analysis	\$18,000	\$0	\$0	\$0	\$0	\$18,000
City of Mission Zoning			\$250,000	\$0	\$250,000	\$250,000
Hookups**		\$3,000,000		\$0	\$3,000,000	\$3,000,000
<b>Subtotal Other Services</b>	<b>\$1,993,004</b>	<b>\$3,904,779</b>	<b>\$364,000</b>	<b>\$0</b>	<b>\$4,268,779</b>	<b>\$6,261,783</b>
<b>Fiscal Services</b>						
Bond Counsel	\$0	\$64,307	\$10,000	\$11,500	\$85,807	\$85,807
Financial Advisor	\$0	\$112,717	\$24,309	\$26,644	\$163,670	\$163,670
Fiscal/Legal	\$17,996	\$3,022	\$2,365	\$3,610	\$8,997	\$26,993
Issuance Cost	\$0	\$8,447	\$2,835	\$2,674	\$13,956	\$13,956
Loan Origination Fee*	\$0	\$83,463	\$42,958	\$65,572	\$191,993	\$191,993
<b>Subtotal Fiscal Services</b>	<b>\$17,996</b>	<b>\$271,956</b>	<b>\$82,467</b>	<b>\$110,000</b>	<b>\$464,423</b>	<b>\$482,419</b>
<b>Contingency</b>						
Contingency		\$2,396,957	\$490,000	\$0	\$2,886,957	\$2,886,957
<b>Subtotal Contingency</b>	<b>\$0</b>	<b>\$2,396,957</b>	<b>\$490,000</b>	<b>\$0</b>	<b>\$2,886,957</b>	<b>\$2,886,957</b>
<b>TOTAL COSTS</b>	<b>\$3,234,293</b>	<b>\$31,618,533</b>	<b>\$7,016,467</b>	<b>\$3,610,000</b>	<b>\$42,245,000</b>	<b>\$45,479,293</b>

\* Note: Total origination fee includes \$43,139 from the closed CWSRF commitment (L1000143) and \$148,854 for the current request.

**Agua SUD - Eastern Wastewater Project Sources of Funds**

Program/Source	Commitment Type	Commitment No.	Commitment Date	Closed Date	Amount
<b>PAD Funding</b>					
EDAP	Grant	G080015	7/29/2008	3/18/2009	\$ 168,293
EDAP	Grant	G120003	12/15/2011	5/5/2012	\$ 2,426,000
BECC Funds	Grant				\$ 500,000
Local Funds					\$ 140,000
<b>Subtotal PAD Funding</b>					<b>\$3,234,293</b>
<b>Construction Funding</b>					
EDAP	Grant	G1000252	10/17/2013	Pending	\$29,300,000
CWSRF	Loan	L1000143	4/18/2013	6/5/2014	\$2,375,000
CWSRF	Loan Forgiveness	LF1000144	4/18/2013	6/5/2014	\$2,375,000
CWSRF	Loan	L1000423	This Request		\$8,195,000
<b>Subtotal Construction Funding</b>					<b>\$42,245,000</b>
<b>TOTAL FUNDING</b>					<b>\$45,479,293</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE  
AMOUNT OF \$8,195,000 TO AGUA SPECIAL UTILITY DISTRICT  
FROM THE CLEAN WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$8,195,000 AGUA SPECIAL UTILITY DISTRICT  
WATERWORKS AND SEWER SYSTEM REVENUE BONDS,  
PROPOSED SERIES 2015

(15- )

WHEREAS, the Agua Special Utility District (District) has filed an application for financial assistance in the amount of \$8,195,000 from the Clean Water State Revolving Fund (CWSRF) to finance the planning, acquisition, design and construction of certain wastewater system improvements identified as Project No. 10365; and

WHEREAS, the District seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$8,195,000 Agua Special Utility District Waterworks and Sewer System Revenue Bonds, Proposed Series 2015 (together with all authorizing documents, (Obligations)), all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the District has offered a pledge of a first lien on the gross revenues of the District's Waterworks and Sewer System as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the District will be sufficient to meet all the Obligations assumed by the District, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, as well as state law, in accordance with Texas Water Code § 15.607;
3. that the District has adopted and implemented a water conservation program for the more efficient use of water that will meet reasonably anticipated local needs and conditions and that incorporates practices, techniques or technology prescribed by the Texas Water Code and TWDB's rules; and
4. that the District has considered cost-effective, innovative, and nonconventional methods of treatment, in accordance with Texas Water Code § 15.007.

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

A commitment is made by the TWDB to the Agua Special Utility District for financial assistance in the amount of \$8,195,000 from the Clean Water State Revolving Fund through the TWDB's proposed purchase of \$8,195,000 Agua Special Utility District Waterworks and Sewer System Revenue Bonds, Proposed Series 2015. This commitment will expire on March 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 issuance of a written approving opinion of the Attorney General of the State of Texas stating that all of the requirements of the laws under which said Obligations were issued have been complied with; that said Obligations were issued in conformity with the Constitution and laws of the State of Texas; and that said Obligations are valid and binding obligations of the District;
3. this commitment is contingent upon the District's compliance with all applicable requirements contained in 31 TAC Chapter 375;
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. the District, or an obligated person for whom financial or operating data is presented to the TWDB in the application for financial assistance either individually or in combination with other issuers of the District's Obligations or obligated persons, will, at a minimum, regardless of the amount of the Obligations, covenant to comply with requirements for continuing disclosure on an ongoing basis substantially in the manner required by Securities and Exchange Commission (SEC) in 17 CFR § 240.15c2-12 (Rule 15c2-12) and determined as if the TWDB were a Participating Underwriter within the meaning of such rule, such continuing disclosure undertaking being for the benefit of the TWDB and the beneficial owners of the District's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the District is an obligated person with respect to such bonds under SEC Rule 15c2-12;
6. the Obligations must contain a provision requiring the District 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 the District 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 the District 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 the District 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 District, 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, the District 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, the District 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, the District 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 the District execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

#### Conditions Related To Tax-Exempt Status

15. the District's bond counsel must prepare a written opinion that states that the interest on the Obligations is excludable from gross income or is exempt from federal income taxation. Bond counsel may rely on covenants and representations of the District when rendering this opinion;
16. the District's bond counsel opinion must also state that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the District when rendering this opinion;
17. the Obligations must include a provision prohibiting the District 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);
18. 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;
19. the Obligations must include a provision requiring the District take all necessary steps to comply with the requirement that certain amounts earned on the investment of gross proceeds of the Obligations be rebated to the federal government in order to satisfy the requirements of § 148 of the Code. The Obligations must provide that the District will:
- a. account for all Gross Proceeds, as defined in the Code and Regulations, (including all receipts, expenditures and investments thereof) on its books of account separately and apart from all other funds (and receipts, expenditures and investments thereof) and retain all records of such accounting for at least six years after the final Computation Date. The District may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the District, provided that the District separately accounts for each receipt and expenditure of such Gross Proceeds and the obligations acquired therewith;
  - b. calculate the Rebate Amount, as defined in the Code and Regulations, with respect to its loan, not less frequently than each Computation Date, in accordance with rules set forth in § 148(f) of the Code, § 1.148-3 of the Regulations, and the rulings thereunder. The District 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;

20. the Obligations must include a provision prohibiting the District from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
21. the Obligations must provide that the District will not cause or permit the Obligations to be treated as “federally guaranteed” obligations within the meaning of § 149(b) of the Code;
22. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the District’s reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
23. 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;
24. the Obligations must provide that neither the District nor a related party thereto will acquire any of the TWDB’s Source Series Bonds in an amount related to the amount of the Obligations to be acquired from the District by the TWDB;

#### State Revolving Fund Conditions

25. the District shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
26. 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. The District, 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;
27. the Obligations must include a provision stating that the District 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 District 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;

28. 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 the District will adhere to the approved project schedule;
29. the Obligations must contain a covenant that the District 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;
30. the Obligations must contain language detailing compliance with the requirements set forth in 33 U.S.C. § 1382 *et seq.* related to maintaining project accounts containing financial assistance for planning, design, acquisition, or construction, as applicable, in accordance with generally accepted accounting principles (GAAP). These standards and principles also apply to the reporting of underlying infrastructure assets;
31. the District shall submit, prior to the release of funds, a schedule of the useful life of the project components prepared by an engineer as well as a certification by the applicant that the average weighted maturity of the obligations purchased by the TWDB does not exceed 120% of the average estimated useful life of the project, as determined by the schedule;

#### Clean Water State Revolving Fund Conditions

32. prior to or at closing, the District shall pay a 1.85% origination fee to the TWDB calculated pursuant 31 TAC Chapter 375;
33. at the TWDB's option, the TWDB may fund the financial assistance under this Resolution with either available cash-on-hand or from bond proceeds. If the financial assistance is funded with available cash-on-hand, the TWDB reserves the right to change the designated source of funds to bond proceeds issued for the purpose of reimbursing funds used to provide the financial assistance approved in this Resolution;
34. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the District 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;
35. prior to release of funds for professional services related to architecture or engineering, including but not limited to contracts for program management, construction management, feasibility studies, preliminary engineering, design,

engineering, surveying, mapping, or other architectural and engineering services as defined in 40 U.S.C. § 1102(2)(A)(C), the District must provide documentation that it has met all applicable federal procurement requirements as more specifically set forth in 40 U.S.C. § 1101 *et seq.*;

Pledge Conditions For The Loan

36. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over the initial sixty (60) months following the issuance of the Obligations;
37. if the District has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations; and
38. the Obligations must contain a provision providing that additional revenue obligations may be incurred only if a certificate to the effect that net system revenues are at least 1.25 times the average annual debt service requirements after giving effect to the additional obligations when net revenues are a) determined from the last completed fiscal year or a 12 consecutive calendar month period ending not more than ninety (90) days preceding the adoption of the additional obligations as certified by a certified public accountant; or b) determined from projected net revenues for a 12-month period based on rates or charges that have been in effect for at least sixty (60) days prior to the month in which the issuance of the additional obligations is authorized, as certified by a certified public accountant.

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

Special Conditions:

39. 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 375;
40. the District 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;
41. the Obligations must include a provision requiring that, prior to any action by the District 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;

42. prior to closing, the District must provide the Executive Administrator with a detailed schedule with milestones for completing the environmental review of the project, including notice and public participation, and agency coordination; and
43. construction funds from this commitment and commitments through TWDB Resolutions No. 13-42, as amended by Nos. 13-64 and 14-33, and No. 13-188, as amended by Nos. 14-89 and 14-112, for any project component of Project No. 10365 shall not be released until the Executive Administrator has issued a Finding of No Significant Impact.

APPROVED and ordered of record this 26<sup>th</sup> day of March, 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:**

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:**

If < 32 connections/mile, population < 10K:  
 If < 32 connections/mile, population > 10K:  
 If > 32 connections/mile, population > 10K:

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
		NA			NA
	NA			NA	
	NA			NA	

Does the applicant meet Water Loss Threshold requirements?      Yes      No

**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.

# Agua Special Utility District, Hidalgo County

