

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: July 23, 2015

TEAM MANAGER: Lee Huntoon

APPLICANT	City of Marfa
TYPE OF ASSISTANCE	\$705,000 Loan
LEGAL PLEDGE	Ad Valorem Tax and Surplus Revenues of the Waterworks and Sewer System

STAFF RECOMMENDATION

Approve No Action

ACTION REQUESTED

Consider approving, by resolution, a request from the **City of Marfa (Presidio County)** for a \$705,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, design, and construction of a new water well.

PROJECT

Additional Water Well
Project Number 51018

BACKGROUND

Passed by the 83rd Legislature and approved by Texas voters through a constitutional amendment, the State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas (SWIRFT) were created to provide affordable, alternative financing options to develop projects that are recommended water management strategies in the State Water Plan. The program referred to as SWIFT provides financing through low-interest loans, deferral of loan repayments, and incremental repurchase terms for projects with state ownership aspects. All SWIFT projects presented for consideration have been prioritized based on criteria outlined in Texas Administrative Code Title 31 §363.1304 and are included on the prioritized list of projects approved by the Board on May 6, 2015.

The City of Marfa (City) currently operates two water wells which supply the demand of the entire city. One of the wells has been in operation for 80 years and the pump is lodged in the casing. Attempts to repair/replace the pump have been unsuccessful. While the aquifer has plenty of water for the City, the loss of this well will hinder the City's ability to serve the domestic water demand. This project would drill and equip a new well to replace the existing well that has reached the end of its projected useful life.

COMMITMENT PERIOD: TO EXPIRE DECEMBER 31, 2015.

FINANCIALKey Issues

None

Pledge and Repayment

The City is pledging ad valorem taxes and surplus net revenues for the repayment of the proposed loan. The City intends to utilize tax to pay the proposed debt service. The City's current combined average monthly water and wastewater rate is \$49.51. Based on staff's analysis of financial documentation received, current system revenues will need to be raised in order to meet existing debt service and the additional debt service associated with this loan. The City has an existing interest and sinking fund tax of .113. In order to generate sufficient revenues to meet the proposed debt service, the City will need to levy an additional tax rate of \$0.180 for 2016 through 2026. This will make for a total interest and sinking fund tax rate of .293. The tax rate of \$0.293 generates approximately \$320,517 annually, assuming a tax collection rate of 90%.

Cost Savings

Based on a 20-year maturity schedule, current interest rates, and a 35.5% subsidy, the City could save approximately \$88,837 over the life of the loan.

Internal Risk Score

Staff assigns a 2C to the City. This means that the applicant's repayment capacity is sufficient to cover the existing and proposed debt. The applicant's earnings trends and coverage ratios are marginal and are more susceptible to slight deviations in economic conditions. Changes in economic, financial, business conditions or any other adverse circumstances may weaken the entity's capacity to meet its financial obligations.

The City's current 2013 estimated population is 2,381 with a median household income of \$42,656 as compared to \$51,900 for the state of Texas. The City's unemployment rate of 8.9% is considerably higher than the state average of 4.1%. The City's average monthly water and sewer bills combine to \$49.51 with a household cost factor of 1.39%.

The City has existing debt service of \$5,432,912 to be paid out through 2036. Total debt per capita is currently \$1,747.16 and will increase to \$2,043.26 with the additional proposed debt which is slightly high for a smaller city. The City's Governmental Funds reported a deficiency of revenues over expenditures of \$335,998 at the end of FY2014. The Water and Sewer Utility Fund reported operating income of \$619,702 before depreciation. Because the City will have a larger debt per capita for a small city, and is showing a deficiency of revenues in its General Fund; staff supports a 2C rating.

CONDITIONS

Standard SWIFT, tax-exempt, and tax and surplus net revenue conditions and further conditioned as follows:

- 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

Authority	City of Marfa
Program	State Water Implementation Fund for Texas
Commitment Code	L15018
Project Number	51018
Intended Use Plan Year	2015
Fund Number	361
Type of Pledge	3
Revenue Pledge Level	First
Legal Description	\$705,000 City of Marfa, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Series 2015
Tax-exempt or Taxable	Tax-exempt
Refinance	No
Outlay Requirement	No
Disbursement Method	Escrow
Outlay Type	N/A
Population	2,381
Rural	Yes
Water Connections	1,266
Wastewater Connections	1,050
Qualifies as Disadvantaged	No
Disadvantaged Level	9
Clean Water State Revolving Fund Type	N/A
SWIFT Financing Type	Low-Interest Loan
SWIFT Project Characteristic	Rural
Financial Managerial & Technical Complete	No
Funding Phase Code	Planning, Design, and Construction
Pre-Design	Yes
Project Consistent with Water Plan	Yes
Water Conservation Plan	Adopted
Water Rights Certification Required	Yes
Internal Risk Score	2C
External Ratings (for SRF rates)	
Standard and Poor's	Non-rated
Moody's	Non-rated
Fitch	Non-rated
Special Issues	

Project Team

Team Manager	Lee Huntoon
Financial Analyst	James Horan
Engineering Reviewer	Juan Moran
Environmental Reviewer	Chris Caran
Attorney	Alexis Lorick

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
City of Marfa

Dated Date: 12/1/2015
 Delivery Date: 12/1/2015
 First Interest: 6/1/2016
 First Principal: 12/1/2016
 Last Principal: 12/1/2035
 Fiscal Year End: 09/30
 Required Coverage: 1.1

Source: SWIFT-LOW
 Insurance: No
 Case: Tax and Revenues
 Admin.Fee: \$ -
 Admin. Fee Payment Date: N/A
 Total Assessed Valuation: \$ 121,598,100

FISCAL YEAR	REQUIRED TAX RATE	TAX REVENUES WITH COLL. @ 90%	PROJECTED NET SYSTEM REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	PRINCIPAL PAYMENT	INTEREST RATE	\$705,000 ISSUE			TOTAL DEBT SERVICE	COVERAGE
								INTEREST PAYMENT	TOTAL PAYMENT	TOTAL PAYMENT		
2016	0.233	254,737	121,606	376,343	335,370	-	0.305%	6,760	6,760	342,130	1.10	
2017	0.293	320,517	121,606	442,123	363,485	25,000	0.602%	13,445	38,445	401,930	1.10	
2018	0.212	231,603	121,606	353,209	277,845	30,000	0.770%	13,254	43,254	321,099	1.10	
2019	0.217	236,942	121,606	358,548	282,950	30,000	0.905%	13,003	43,003	325,953	1.10	
2020	0.211	230,953	121,606	352,559	277,802	30,000	1.073%	12,706	42,706	320,508	1.10	
2021	0.215	235,496	121,606	357,102	282,280	30,000	1.247%	12,358	42,358	324,638	1.10	
2022	0.056	61,765	121,606	183,371	124,744	30,000	1.428%	11,957	41,957	166,701	1.10	
2023	0.066	72,302	121,606	193,908	134,766	30,000	1.524%	11,514	41,514	176,280	1.10	
2024	0.071	77,265	121,606	198,871	134,787	35,000	1.602%	11,005	46,005	180,792	1.10	
2025	0.070	76,656	121,606	198,262	134,809	35,000	1.686%	10,430	45,430	180,239	1.10	
2026	0.069	75,993	121,606	197,599	134,830	35,000	1.878%	9,806	44,806	179,636	1.10	
2027	-	-	121,606	121,606	44,852	35,000	2.029%	9,122	44,122	88,974	1.37	
2028	-	-	121,606	121,606	44,873	35,000	2.154%	8,390	43,390	88,263	1.38	
2029	-	-	121,606	121,606	44,895	35,000	2.243%	7,621	42,621	87,516	1.39	
2030	-	-	121,606	121,606	44,916	40,000	2.327%	6,763	46,763	91,679	1.33	
2031	-	-	121,606	121,606	44,938	40,000	2.396%	5,818	45,818	90,756	1.34	
2032	-	-	121,606	121,606	44,959	40,000	2.453%	4,848	44,848	89,807	1.35	
2033	-	-	121,606	121,606	44,981	40,000	2.500%	3,858	43,858	88,839	1.37	
2034	-	-	121,606	121,606	45,002	40,000	2.543%	2,849	42,849	87,851	1.38	
2035	-	-	121,606	121,606	45,024	45,000	2.583%	1,759	46,759	91,783	1.32	
2036	-	-	121,606	121,606	45,045	45,000	2.618%	589	45,589	90,634	1.34	
				\$ 4,427,954	\$ 2,933,153	\$ 705,000		\$ 177,852	\$ 882,852	\$ 3,816,005		

AVERAGE (MATURITY) LIFE	11.34 YEARS
NET INTEREST RATE	2.225%
COST SAVINGS	\$ 88,837
AVERAGE ANNUAL REQUIREMENT	\$181,715

Marfa
51018 Additional Water Well
Engineering and Environmental Review

Engineering:

Key Issues:

None known at this time.

Project Need/Description

Need: The City currently operates two water wells which supply the demand of the entire city. One of the wells has been in operation for 80 years and the pump is lodged in the casing. Attempts to repair/replace the pump have been unsuccessful. While the aquifer has plenty of water for the City, the loss of this well will hinder the City's ability to serve the domestic water demand.

Project Description: This City proposes to drill and equip a new water well to replace the existing well that has reached the end of its projected useful life.

Project Schedule:

Project Task	Schedule Date
Closing	12/1/2015
Engineering Feasibility Report Completion (End of Planning Phase)	4/30/2016
Design Phase Complete	6/30/2016
Start of Construction	7/31/2016
Construction Completion	10/31/2016

Environmental Section:

Key Issues:

None known at this time.

Environmental Summary:

The proposed loan is for well construction and possible acquisition of land and installation of a raw-water pipeline. Pursuant to the requirements of 31 Texas Administrative Code (TAC) Subchapter 363.14, funds for acquisition, design, and construction cannot be released until an environmental review has been completed and a favorable environmental determination has been issued by the Executive Administrator.

Marfa
51018 - Additional Well

Budget Items	TWDB Funds	Local & Other Funds	Total Cost
Construction			
Construction	\$552,754	\$0	\$552,754
Construction Total	\$552,754	\$0	\$552,754
Basic Engineering Services			
Construction Engineering	\$8,000	\$0	\$8,000
Design	\$27,900	\$0	\$27,900
Planning	\$16,700	\$0	\$16,700
Basic Engineering Services Total	\$52,600	\$0	\$52,600
Special Services			
Inspection	\$3,175	\$0	\$3,175
Special Services Total	\$3,175	\$0	\$3,175
Contingency			
Contingency	\$58,005	\$0	\$58,005
Contingency Total	\$58,005	\$0	\$58,005
Other			
Land/Easements Acquisition	\$5,000	\$0	\$5,000
Other Total	\$5,000	\$0	\$5,000
Fiscal Services			
Bond Counsel	\$16,733	\$0	\$16,733
Financial Advisor	\$16,733	\$0	\$16,733
Fiscal Services Total	\$33,466	\$0	\$33,466
Grand Total	\$705,000	\$0	\$705,000

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
 APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
 \$705,000 TO CITY OF MARFA
 FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
 THROUGH THE PROPOSED PURCHASE OF
 \$705,000 CITY OF MARFA, TEXAS COMBINATION TAX AND SURPLUS REVENUE
 CERTIFICATES OF OBLIGATION,
 PROPOSED SERIES 2015

(15-)

WHEREAS, the City of Marfa, located in Presidio County, Texas, (City) has filed an application for financial assistance in the amount of \$705,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), to finance the planning, design, and construction of certain water supply project(s) identified as Project No. 51018; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$705,000 City of Marfa, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2015, (together with all authorizing documents (Obligations)), all as is more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City has offered a pledge of an annual ad valorem tax on the City's taxable properties and surplus net revenues of the combined waterworks and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.1307; and

WHEREAS, interest rate subsidies are available to the City at the following levels: 35.5% for loans of a term of 20 years, 27% for loans of a term of 25 years, and 22% for loans of a term of 30 years. The interest rate subsidy applicable to each proposed series will be set through each financing agreement executed between the TWDB and the City, pursuant to this Resolution; and

WHEREAS, the TWDB hereby finds:

1. that the application and assistance applied for meet the requirements of Texas Water Code, Chapter 15, Subchapters G and H and 31 TAC Chapter 363, Subchapters A and M;
2. that the project is a recommended water management strategy in the State Water Plan adopted pursuant to Texas Water Code § 16.051, in accordance with Texas Water Code § 15.474(a);
3. that a water conservation plan, if required by Texas Water Code § 11.1271, has been submitted and implemented in accordance with 31 TAC § 363.1309(b)(1);

4. that the City satisfactorily completed any request by the Executive Administrator or a regional planning group for information relevant to the project, including a water infrastructure financing survey under Texas Water Code § 16.053(q), in accordance with 31 TAC § 363.1309(b)(2);
5. that the current water audit, if required by Texas Water Code § 16.0121, has been completed by the City and filed with the TWDB in accordance with 31 TAC § 358.6; and
6. that the City has acknowledged its legal obligation to comply with any applicable requirements of federal law relating to contracting with disadvantaged business enterprises, and any applicable state law relating to contracting with historically underutilized businesses, in accordance with Texas Water Code § 15.435(h) and 31 TAC § 363.1309(b)(3).

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

A commitment is made by the TWDB to City of Marfa for financial assistance in the amount of \$702,770 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$702,770 City of Marfa, Texas Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2015. This commitment will expire on December 31, 2015.

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 City;
3. this commitment is contingent upon the City's continued compliance with all applicable laws, rules, policies and guidance as these may be amended from time to time to adapt to a change in law, in circumstances, or any other legal requirement;
4. this commitment is contingent upon the City executing a separate financing agreement, approved as to form and substance by the Executive Administrator, and submitting that executed agreement to the TWDB consistent with the terms and conditions described in the financing agreement;

5. the City shall use a paying agent/registrar in accordance with 31 TAC Section 363.42(c)(2), and shall require the paying agent/registrar to provide a copy, to the TWDB and to the TWDB's designated Trustee, of all receipts documenting debt service payments;

The Following Conditions Must Be Included in the Obligations:

6. 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;
7. the Obligations must include a provision wherein the City, 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 City'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 City's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the City is an obligated person with respect to such bonds under SEC Rule 15c2-12;
8. the Obligations must contain a provision requiring the City 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;
9. the Obligations must include a provision requiring the City to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project for the following purposes as approved by the Executive Administrator: (1) 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 (2) eligible costs for the project as authorized by the Executive Administrator;
10. 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;
11. 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;

12. loan proceeds shall not be used by the City 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 City 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, recycling and disposition of any contaminated sewage sludge, contaminated sediments and/or contaminated media that may be generated by the City, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;
13. the Obligations must include a provision stating that the City shall report to the TWDB the amounts of project funds, if any, that were used to compensate historically underutilized businesses that worked on the project, in accordance with 31 TAC § 363.1312;
14. the Obligations must contain a provision that the TWDB will purchase the Obligations, acting through the TWDB's designated Trustee, and the Obligations shall be registered in the name of Cede & Co. and closed in book-entry form in accordance with 31 TAC Section 363.42(c)(1);
15. the Obligations must include a provision prohibiting the City 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 as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
16. 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;

17. the Obligations must include a provision requiring the City 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 City 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 City may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the City, provided that the City 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 City 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;
18. the Obligations must include a provision prohibiting the City from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
19. the Obligations must provide that the City will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
20. the Obligations must provide that neither the City 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 City by the TWDB;

Tax and Surplus Revenue Pledge

21. 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 the City 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 the City shall not transfer any funds from the City '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;

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, the City 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

 - ii. the Obligations must include a requirement that the City 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 the City and other obligations of the City which are secured in whole or in part by the pledged revenues, for which the City is budgeting the repayment of such Obligations, or the City 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;

Conditions to Close or for Release of Funds:

22. prior to closing, the City 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;
23. prior to closing, and if not previously provided with the application, the City 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;
24. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the City shall execute an escrow agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
25. prior to release of funds for construction, the City must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the City has the legal authority necessary to complete the acquisitions;
26. prior to release of funds for design or construction for specific project elements, the environmental review must be completed and a favorable environmental finding must have been issued;
27. prior to closing, the City'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 City when rendering this opinion;
28. prior to closing, the City's bond counsel must prepare a written opinion that also states that the Obligations are not "private activity bonds." Bond counsel may rely on covenants and representations of the City when rendering this opinion;
29. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the City's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
30. 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;

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

Special Conditions:

31. prior to the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the City has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
32. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the City has the right to use the water that the project financed by the TWDB will provide.

APPROVED and ordered of record this, the 23rd day of July, 2015.

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
Baseline				
5-year Goal				
10-year Goal				

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.

**City of Marfa,
Presidio County**

