

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: July 23, 2015

TEAM MANAGER: Clay Schultz

APPLICANT	Hays Caldwell Public Utility Agency
TYPE OF ASSISTANCE	\$12,500,000 Loan
LEGAL PLEDGE	Contract Revenues

STAFF RECOMMENDATION

Approve No Action

ACTION REQUESTED

Approve, by resolution, a request from the **Hays Caldwell Public Utility Agency (Hays, Caldwell, Comal, and Guadalupe Counties)** for a \$12,500,000 loan from the State Water Implementation Revenue Fund for Texas to finance the planning, acquisition, design, and construction of an interconnection between the cities of Kyle and Buda.

PROJECT

Hays-Caldwell PUA Phase 1A Transmission Line
Project Number 51006

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 Hays Caldwell Public Utility Agency (Agency) was formed in 2007 under Texas Local Government Code Chapter 572 by the cities of Buda, Kyle, and San Marcos, and the Canyon Regional Water Authority for the purpose of acquiring groundwater rights and constructing, operating, and maintaining a project to produce, treat and transport groundwater from the

COMMITMENT PERIOD: TO EXPIRE ON DECEMBER 31, 2015
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Carrizo-Wilcox aquifer to the sponsoring entities. This larger regional project is anticipated to be online in 2023.

Based on water projections, the Agency's sponsoring entities do not collectively project a water need prior to 2023, however, the City of Buda projects a water shortage beginning in 2018. In 2018 the City's need is projected to be approximately 152 acre-feet per year, rising to 1,041 acre-feet per year in 2023. The proposed SWIFT project will complete Phase 1A of the larger regional project discussed above and is projected to satisfy Buda's water demands through 2060.

The Agency requests funding on behalf of three of its four sponsoring entities, the cities of Kyle and San Marcos along with the Canyon Regional Water Authority (Sponsors). The City of Buda will fund its share of the project separately and is not included in this request.

FINANCIAL

Key Issues

The proposed financing package consists of two series of bonds. The Series 2015A bonds are supported by Canyon Regional Water Authority and the City of San Marcos while the 2015B bonds are supported by the City of Kyle.

The Agency does not anticipate having substantial operating revenues until its regional Carrizo-Wilcox groundwater project discussed above is online in 2023.

Pledge and Repayment

Until operating revenues are in place, the Sponsors will continue to invest in the Agency. The Sponsors will either provide capital contributions directly to the Agency or the Agency will issue debt and the Sponsors will make monthly payments to cover debt obligations. The Agency is pledging contract revenues from the Sponsors for the proposed financing. All contracts have been executed. Based on the terms of the contracts, staff anticipates sufficient revenue to support the proposed debt service requirements.

Cost Savings

Based on the requested maturity schedules of 20 and 30 years, subsidies of 35.5% and 22%, respectively, current interest rates, and a total loan amount of \$12,500,000, the Agency could save approximately \$1,524,801 over the life of the loan.

Internal Risk Score

Staff assigns a 2B to the Agency, and the proposed project to be funded by the Texas Water Development Board. A risk score of 2B means that the Agency's repayment capacity is adequate. The Agency's earnings trends and coverage ratios, while stable, may be 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 Agency does not currently rely on operating revenues to support itself. It relies on cash contributions from the member Sponsors to meet its commitments. The Agency has no long-

term debt and its net position is approximately \$4.1 million. Cash and cash equivalents approximate \$2.1 million.

Due to the fact that the Agency currently has no operating revenues, the strength of the proposed financing is the pledged contract revenues associated with the Sponsors. All of the Sponsors exhibit a healthy financial condition with positive operating trends. Canyon Regional Water Authority's latest audit shows a Net Position of approximately \$17.9 million. Of this amount, \$6 million is unrestricted and represents resources available to fund operations for the coming year. Recent audited financial statements of the cities of Kyle and San Marcos reflect cash balances of \$28 million and \$25 million, respectively.

LEGAL

Key Issues

None.

Conditions

Standard SWIFT, tax-exempt, contract revenue conditions.

- 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

Responsible Authority	Hays Caldwell Public Utility Agency
Program	State Water Implementation Fund for Texas - SWIFT
Commitment Codes	L15007
Project Number	51006
Intended Use Plan Year	N/A
Fund Number	361
Type of Pledge	4-Contract Revenue
Revenue Pledge Level	First
Legal Description	\$8,790,000 Contract Revenue Bonds, Proposed Series 2015A \$3,710,000 Contract Revenue Bonds, Proposed Series 2015B
Tax-Exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	No
Disbursement Method	Escrow
Outlay Type	N/A
Population	160,000 (service area)
Rural	No
Water Connections	0
Wastewater Connections	N/A
Qualifies as Disadvantaged	No
Disadvantaged Level	9 – NA
Clean Water State Revolving Fund Type	N/A
Financial, Managerial and Technical Review Complete?	N/A
SWIFT Financing Type	Low-Interest Loan
SWIFT Characteristic	None
Phase Committing	Planning, Acquisition, Design, Construction
Pre-Design	Yes
Project Consistent with Water Plan	Yes
Water Conservation Plan	N/A
Water Rights Certification Required	No
Internal Risk Score	2B
External Ratings	
Standard and Poor's	Non-Rated
Moody's	Non-Rated
Fitch	Non-Rated
Special Issues	None

Project Team

Team Manager	Clay Schultz
Financial Analyst	Maxine Gilford
Engineering Reviewer	David Firgens
Environmental Reviewer	William Alfaro
Attorney	Alexis Lorick

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
Hays Caldwell Public Utility Agency

\$8,790,000 Contract Revenue Bonds, Proposed Series 2015A

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: 1.0

Source: SWIFT-LOW
 Insurance: No
 Case: Contract Revenue
 Admin.Fee: N/A
 Admin Fee: N/A
 Payment Date: N/A

\$3,710,000 Contract Revenue Bonds, Proposed Series 2015B

Dated Date: 12/1/2015
 Delivery Date: 12/1/2015
 First Interest: 6/1/2016
 First Principal: 12/1/2016
 Last Principal: 12/1/2045
 Fiscal Year End: 9/30
 Required Coverage: 1.0

Source: SWIFT-LOW
 Insurance: No
 Case: Contract Revenue
 Admin.Fee: N/A
 Admin Fee: N/A
 Payment Date: N/A

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$8,790,000 ISSUE			\$3,710,000 ISSUE			TOTAL DEBT SERVICE	ACTUAL COVERAGE		
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE			INTEREST PAYMENT	TOTAL PAYMENT
2016	128,190	-	-	-	78,132	-	78,132	-	50,058	50,058	128,190	1.00
2017	730,634	-	385,000	0.305%	155,678	540,678	90,000	0.354%	99,956	189,956	730,634	1.00
2018	732,263	-	390,000	0.602%	153,917	543,917	90,000	0.713%	98,347	188,347	732,263	1.00
2019	727,726	-	390,000	0.770%	151,241	541,241	90,000	0.915%	96,485	186,485	727,726	1.00
2020	733,513	-	395,000	0.905%	147,952	542,952	95,000	1.079%	95,560	190,560	733,513	1.00
2021	728,485	-	395,000	1.073%	144,046	539,046	95,000	1.282%	94,439	189,439	728,485	1.00
2022	727,553	-	400,000	1.247%	139,433	539,433	95,000	1.493%	93,121	188,121	727,553	1.00
2023	725,646	-	405,000	1.428%	134,047	539,047	95,000	1.711%	91,599	186,599	725,646	1.00
2024	727,903	-	410,000	1.524%	128,031	538,031	100,000	1.828%	89,872	189,872	727,903	1.00
2025	729,540	-	420,000	1.602%	121,543	541,543	100,000	1.922%	87,997	187,997	729,540	1.00
2026	725,620	-	425,000	1.686%	114,596	539,596	100,000	2.023%	86,025	186,025	725,620	1.00
2027	725,805	-	430,000	1.878%	106,975	536,975	105,000	2.255%	83,829	188,829	725,805	1.00
2028	724,838	-	440,000	2.029%	98,473	538,473	105,000	2.439%	81,365	186,365	724,838	1.00
2029	727,822	-	450,000	2.154%	89,162	539,162	110,000	2.590%	78,660	188,660	727,822	1.00
2030	724,908	-	460,000	2.243%	79,157	539,157	110,000	2.698%	75,751	185,751	724,908	1.00
2031	726,188	-	470,000	2.327%	68,529	538,529	115,000	2.798%	72,659	187,659	726,188	1.00
2032	726,631	-	480,000	2.396%	57,311	537,311	120,000	2.882%	69,321	189,321	726,631	1.00
2033	721,371	-	490,000	2.453%	45,550	535,550	120,000	2.951%	65,821	185,821	721,371	1.00
2034	725,398	-	505,000	2.500%	33,228	538,228	125,000	3.008%	62,170	187,170	725,398	1.00
2035	723,669	-	515,000	2.543%	20,367	535,367	130,000	3.060%	58,301	188,301	723,669	1.00
2036	731,124	-	535,000	2.583%	6,910	541,910	135,000	3.108%	54,214	189,214	731,124	1.00
2037	184,990	-	-	-	-	-	135,000	3.151%	49,990	184,990	184,990	1.00
2038	185,629	-	-	-	-	-	140,000	3.191%	45,629	185,629	185,629	1.00
2039	186,059	-	-	-	-	-	145,000	3.223%	41,059	186,059	186,059	1.00
2040	186,281	-	-	-	-	-	150,000	3.254%	36,281	186,281	186,281	1.00
2041	186,297	-	-	-	-	-	155,000	3.282%	31,297	186,297	186,297	1.00
2042	186,107	-	-	-	-	-	160,000	3.308%	26,107	186,107	186,107	1.00
2043	185,715	-	-	-	-	-	165,000	3.329%	20,715	185,715	185,715	1.00
2044	185,126	-	-	-	-	-	170,000	3.344%	15,126	185,126	185,126	1.00
2045	184,345	-	-	-	-	-	175,000	3.358%	9,345	184,345	184,345	1.00
2046	193,203	-	-	-	-	-	190,000	3.372%	3,203	193,203	193,203	1.00
	\$	-	\$ 8,790,000		\$ 2,074,279	\$ 10,864,279	\$ 3,710,000		\$ 1,964,301	\$ 5,674,301	\$ 16,538,579	

\$8,790,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	11.08 YEARS
NET INTEREST RATE	2.130%
COST SAVINGS	\$1,031,378
AVERAGE ANNUAL REQUIREMENT	\$543,214

\$3,710,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	17.44 YEARS
NET INTEREST RATE	3.036%
COST SAVINGS	\$ 493,423
AVERAGE ANNUAL REQUIREMENT	\$189,143

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$533,503

**Hays Caldwell Public Utility Agency
Engineering and Environmental Review**

Engineering:Key Issues

None.

Project Need / Description

Need: The Hays Caldwell Public Utility Agency (Agency) is a political subdivision comprised of the cities of San Marcos, Kyle, and Buda, and the Canyon Regional Water Authority. The City of Buda (City) projects a water shortage beginning in 2018 in which the City's need is projected to be 152 acre-feet per year, rising to 1,041 acre-feet per year in 2023.

Project Description: The Agency is requesting planning, acquisition, design, and construction funding to complete Phase 1A of a larger scale regional project that will ultimately provide infrastructure necessary to produce, treat, and deliver Carrizo water to the Agency's sponsoring entities. The Phase 1A pipeline will allow interim water to be sold between Kyle and Buda until such time as the Agency's Carrizo project is online in 2023. The Agency's Carrizo project will then use the Phase 1A facilities to deliver the Carrizo water to the City of Buda. Specifically, the Phase 1A project will include a potable water pump station and a new transmission pipeline anticipated to have a length of approximately 19,000 linear feet.

Project Schedule

Project Task	Schedule Date
Closing	12/1/2015
Engineering Feasibility Report Completion (End of Planning Phase)	3/31/2016
Design Phase Complete	5/1/2016
Start of Construction	5/15/2016
Construction Completion	5/31/2017

Environmental:Key Issues

None known at this time.

Environmental Summary

Pursuant to the requirements of 31 Texas Administrative Code §363.14, all financial assistance shall be conditioned to read that funding for design, acquisition and construction costs for specific project elements will not be released until the environmental review has been completed and a favorable environmental determination has been issued.

**Hays Caldwell Public Utility Agency
51006 - Hays-Caldwell PUA Phase 1A Transmission Line**

Budget Items	TWDB Funds	Local & Other Funds	Total Cost
Construction			
Construction	\$7,403,760	\$396,240	\$7,800,000
Construction Total	\$7,403,760	\$396,240	\$7,800,000
Basic Engineering Services			
Construction Engineering	\$332,220	\$17,780	\$350,000
Design	\$620,777	\$33,223	\$654,000
Planning	\$87,326	\$4,674	\$92,000
Basic Engineering Services Total	\$1,040,323	\$55,677	\$1,096,000
Special Services			
Environmental	\$93,781	\$5,019	\$98,800
Geotechnical	\$47,650	\$2,550	\$50,200
Permits	\$7,119	\$381	\$7,500
Project Management (by engineer)	\$37,968	\$2,032	\$40,000
Surveying	\$50,260	\$2,690	\$52,950
Testing	\$56,952	\$3,048	\$60,000
Special Services Total	\$293,730	\$15,720	\$309,450
Contingency			
Contingency	\$1,606,185	\$76,141	\$1,682,326
Contingency Total	\$1,606,185	\$76,141	\$1,682,326
Other			
Land/Easements Acquisition	\$1,777,519	\$95,131	\$1,872,650
Other Total	\$1,777,519	\$95,131	\$1,872,650
Fiscal Services			
Bond Counsel	\$104,170	\$9,144	\$113,314
Financial Advisor	\$149,313	\$11,430	\$160,743
Issuance Costs	\$125,000	\$16,510	\$141,510
Fiscal Services Total	\$378,483	\$37,084	\$415,567
Grand Total	\$12,500,000	\$675,993	\$13,175,993

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$12,500,000 TO THE HAYS CALDWELL PUBLIC UTILITY AGENCY
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS
THROUGH THE PROPOSED PURCHASE OF
\$12,500,000 HAYS CALDWELL PUBLIC UTILITY AGENCY CONTRACT REVENUE
BONDS,
PROPOSED SERIES 2015A AND 2015B

(15-)

WHEREAS, the Hays Caldwell Public Utility Agency, located in Hays County, Texas, (Public Utility Agency) has filed an application for financial assistance in the amount of \$12,500,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT), to finance the planning, acquisition, design and construction of certain water supply project(s) identified as Project No. 51006; and

WHEREAS, the Public Utility Agency seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$12,500,000 Hays Caldwell Public Utility Agency Contract 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 Executive Administrator's staff; and

WHEREAS, the Public Utility Agency has offered a pledge of wholesale contract revenues from the respective sponsoring entities participating in the financing 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, 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 Public Utility Agency 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 Public Utility Agency and filed with the TWDB in accordance with 31 TAC § 358.6;
6. that the Public Utility Agency 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 Hays Caldwell Public Utility Agency for financial assistance in the amount of \$12,500,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of \$12,500,000 Hays Caldwell Public Utility Agency Contract Revenue Bonds, Proposed Series 2015 in one of more series. 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 Public Utility Agency;
3. this commitment is contingent upon the Public Utility Agency'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 Public Utility Agency 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 Public Utility Agency 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 Public Utility Agency, 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 Public Utility Agency'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 Public Utility Agency's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the Public Utility Agency is an obligated person with respect to such bonds under SEC Rule 15c2-12;
8. the Obligations must include a provision requiring the Public Utility Agency 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;
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 Public Utility Agency 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 Public Utility Agency 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 Public Utility Agency, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

11. the Obligations must include a provision stating that the Public Utility Agency 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;
12. 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);
13. the Obligations must include a provision prohibiting the Public Utility Agency 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);
14. 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;
15. the Obligations must include a provision requiring the Public Utility Agency 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 Public Utility Agency 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 Public Utility Agency may, however, to the extent permitted by law, commingle Gross Proceeds of its loan with other money of the Public Utility Agency, provided that the Public Utility Agency 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 Public Utility Agency 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;
- 16. the Obligations must include a provision prohibiting the Public Utility Agency from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;
 - 17. the Obligations must provide that the Public Utility Agency will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;
 - 18. the Obligations must provide that neither the Public Utility Agency 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 Public Utility Agency by the TWDB;

Contract Revenue Pledge

- 19. the Obligations must contain a provision requiring that, upon request by the Executive Administrator, the Public Utility Agency shall submit annual audits of contracting parties for the Executive Administrator's review;

20. the Obligations must contain a provision requiring the Public Utility Agency to require its customers to maintain rates and charges sufficient to pay all of their revenue obligations arising from the operation of the water system;
21. the Obligations must contain a provision that the pledged contract revenues from the Public Utility Agency may not be pledged to the payment of any additional parity obligations of the Public Utility Agency secured by a pledge of the same contract revenues unless: (1) the Public Utility Agency is not in default; (2) the participating entities in the contract for pledged revenues approve the resolution(s) authorizing the issuance of additional bonds; (3) said resolution(s) provide for deposits to be made to the debt service fund in amounts sufficient to pay the principal of and interest on such additional parity obligations, and; (4) the legal counsel of the Public Utility Agency delivers an opinion that valid contracts are then in effect on the participating entities to the contract for pledged revenues in such amounts that will be sufficient to provide to the Public Utility Agency the necessary funds to pay all principal and interest due on all bonds and additional parity obligations then outstanding after the issuance of proposed additional parity obligations;

Conditions to Close or for Release of Funds:

22. prior to closing, and if not previously provided with the application, the Public Utility Agency 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;
23. prior to closing, when any portion of financial assistance is to be held in escrow or in trust, the Public Utility Agency 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;
24. prior to release of funds for construction, the Public Utility Agency must provide the TWDB with evidence that the necessary acquisitions of land, leases, easements, and rights-of-way have been completed, or that the Public Utility Agency has the legal authority necessary to complete the acquisitions;
25. prior to release of funds for acquisition, design or construction for specific project elements, the environmental review must be completed and a favorable environmental finding must have been issued;
26. prior to closing, the Public Utility Agency'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 Public Utility Agency when rendering this opinion;

27. prior to closing, the Public Utility Agency’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 Public Utility Agency when rendering this opinion;
28. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the Public Utility Agency’s reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;
29. 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; and
30. prior to closing, the Public Utility Agency must submit executed contracts between the Public Utility Agency and the contracting parties regarding the contract revenues pledged to the payment of the Public Utility Agency’s Obligations, in form and substance acceptable to the Executive Administrator. Such contracts shall include provisions consistent with the provisions of this Resolution regarding the contracting parties’ annual audits, the setting of rates and charges and collection of revenues sufficient to meet the Public Utility Agency’s debt service obligations and additional parity obligations.

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.

Hays Caldwell Public Utility Agency, Hays County

