

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: May 5, 2016

TEAM MANAGER: Lee Huntoon

<b>APPLICANT</b>	City of Wellman
<b>TYPE OF ASSISTANCE</b>	\$140,000 Loan \$982,654 Loan Forgiveness
<b>LEGAL PLEDGE</b>	Combination Tax and Surplus System Revenues

### STAFF RECOMMENDATION

Approve       No Action

### ACTION REQUESTED

Approve, by resolution, a request from the City of Wellman (Terry County) for \$1,122,654 in financial assistance consisting of a \$140,000 loan and \$982,654 in loan forgiveness from the Drinking Water State Revolving Fund, to finance the planning, acquisition, design, and construction of a reverse osmosis treatment system and certain water system improvements including water meter replacement.

### PROJECT

Nitrate and Fluoride Removal  
Project Number 62689

### BACKGROUND

The City of Wellman (City) provides drinking water to approximately 100 connections that are located within their city limits. Water for the system is produced from five water wells located in or near the city. All of these wells produce water that exceeds the Maximum Contaminant Levels for the primary constituents arsenic, nitrate, and fluoride.

In 2004 the City constructed an arsenic removal system as a part of an Environmental Protection Agency demonstration project. While the system has been successfully removing arsenic, it does not lower the nitrate and fluoride levels. The proposed solution is to replace the existing arsenic removal system with a reverse osmosis treatment system which will remove all of the contaminants.

**COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE ON NOVEMBER 30, 2016**

## FINANCIAL

### Key Issues

None

### Pledge and Repayment

The City is pledging ad valorem tax and surplus revenue of the waterworks and sewer system to repay the proposed loan portion of \$140,000. The City intends to use property taxes to pay the debt service. In 2015, the City reported a General Fund property tax rate of \$0.3998 and a 92.53% current collection rate with no interest and sinking fund (I&S). The City will be required to establish an I&S tax increase of 0.032 in 2017 and will require a total I&S rate of 0.236 in 2018 in order to meet debt service requirements associated with this loan. Using a conservative collection rate of 90%, the 0.236 I&S increase will generate \$10,463.83 in tax revenue and meet or exceed the required debt service over the life of the loan.

### Principal Forgiveness

The City qualifies for \$982,654 in loan forgiveness of which \$782,654 is from the Drinking Water State Revolving Fund's Disadvantaged Community program and \$200,000 from the Very Small Systems initiative.

### Cost Savings

Based on a 20-year maturity schedule, current market interest rates, and a loan amount of \$140,000, the City would save \$38,896 over the life of the loan by utilizing the Drinking Water State Revolving Fund program. In addition the City is saving \$982,654 in loan forgiveness.

### Internal Risk Score

Staff assigns a 2C to the City and the proposed project to be funded by the Texas water Development Board. This means that the City's repayment capacity is sufficient.

The City's population and connections have shown little change and remain stable. The median household income of the City is \$22,876 which is 43.51% of the State's median household income. The unemployment rate of Terry County is 4.7% as compared to 4.4% for the State as of January 2016. The assessed valuation has experienced minor increases and decreases since 2009 but has increased 0.11% since 2014 showing a more significant upward trend.

The City reports average monthly water and wastewater bills of \$57.80 and \$46.31 respectively. Currently, the average water and wastewater bill represents approximately 5.4% of the median household income. This is much higher than the 2% benchmark for assessing affordability of utility rates; but the City does not need to increase these rates. The City's top ten customers of the water and wastewater system account for approximately 23% of system revenues respectively; which is moderate for a city of this size. The City has virtually no debt at present having just completed paying off outstanding debt service. The City's unrestricted net position increased 233% as the existing net position restricted for debt service has become unrestricted. The City's liquidity is just slightly below the 2 to 3 month benchmark for cash operating expenses with 48 days of cash on hand. By establishing a \$0.236 tax rate the City will establish sufficient income to repay this proposed loan. While the City has no debt, the limited liquidity and weak socioeconomic factors support the 2C risk rating.

**LEGAL**

Key Issues

None

**CONDITIONS**

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

- Executed loan forgiveness agreement;
- Return surplus funds; and,
- Emergency discovery conditions.

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

**Project Data Summary**

<b>Authority</b>	City of Wellman
<b>Program</b>	Drinking Water State Revolving Fund
<b>Commitment Code</b>	L1000525 LF1000481
<b>Project Number</b>	62689
<b>Intended Use Plan Year</b>	2016
<b>Fund Number</b>	951
<b>Type of Pledge</b>	3-Combo Tax and Rev
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	\$140,000 City of Wellman, Texas Combination Tax and Surplus System Revenue Certificates of Obligation, Series 2016; Loan Forgiveness \$982,654
<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>	205
<b>Rural</b>	Yes
<b>Water Connections</b>	100
<b>Wastewater Connections</b>	100
<b>Qualifies as Disadvantaged</b>	Yes
<b>Disadvantaged Level</b>	6
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	N/A
<b>SWIFT Project Type</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	No
<b>Funding Phase Code</b>	Planning, Acquisition, Design, and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Adopted
<b>Water Rights Certification Required</b>	No
<b>Internal Risk Score</b>	2C
<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>	Disadvantaged Community and Very Small System

**Project Team**

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

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY

City of Wellman

\$140,000 City of Wellman, Texas Combination Tax and Surplus System Revenue Certificates of Obligation, Series 2016

**Dated Date:** 7/15/2016  
**Delivery Date:** 7/15/2016  
**First Interest:** 12/15/2016  
**First Principal:** 7/15/2017  
**Last Principal:** 7/15/2035  
**Fiscal Year End:** 03/31  
**Required Coverage:** 1.1

**Source:** DWSRF  
**Rate:** 0.00%  
**Insurance:** N/A  
**Case:** N/A  
**Admin.Fee:** \$3,081  
**Admin. Fee Payment Date:** 7/15/2016  
**Total Assessed Valuation:** \$4,926,476

FISCAL YEAR	REQUIRED TAX RATE	TAX REVENUES WITH COLL. @ 90%	PROJECTED NET SYSTEM REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	PRINCIPAL PAYMENT	INTEREST RATE	\$140,000 ISSUE		TOTAL DEBT SERVICE	COVERAGE
								INTEREST PAYMENT	TOTAL PAYMENT		
2017	0.032	1,409	-	1,409	-	-	0.00%	-	-	-	0.00
2018	0.236	10,448	-	10,448	-	-	0.00%	-	-	-	0.00
2019	0.232	10,307	-	10,307	-	-	0.00%	-	-	-	0.00
2020	0.229	10,166	-	10,166	-	-	0.00%	-	-	-	0.00
2021	0.226	10,025	-	10,025	-	-	0.00%	-	-	-	0.00
2022	0.223	9,884	-	9,884	-	-	0.00%	-	-	-	0.00
2023	0.220	9,743	-	9,743	-	-	0.00%	-	-	-	0.00
2024	0.217	9,602	-	9,602	-	-	0.00%	-	-	-	0.00
2025	0.213	9,461	-	9,461	-	-	0.00%	-	-	-	0.00
2026	0.210	9,320	-	9,320	-	-	0.00%	-	-	-	0.00
2027	0.207	9,180	-	9,180	-	-	0.00%	-	-	-	0.00
2028	0.204	9,039	-	9,039	-	-	0.00%	-	-	-	0.00
2029	0.225	9,988	-	9,988	-	-	0.00%	-	-	-	0.00
2030	0.222	9,827	-	9,827	-	-	0.00%	-	-	-	0.00
2031	0.218	9,666	-	9,666	-	-	0.00%	-	-	-	0.00
2032	0.214	9,505	-	9,505	-	-	0.00%	-	-	-	0.00
2033	0.211	9,344	-	9,344	-	-	0.00%	-	-	-	0.00
2034	0.207	9,182	-	9,182	-	-	0.00%	-	-	-	0.00
2035	0.203	9,021	-	9,021	-	-	0.00%	-	-	-	0.00
2036	0.175	7,770	-	7,770	-	-	0.00%	-	-	-	0.00
				\$ 182,887	\$ -	\$ -		\$ -	\$ -	\$ -	

<b>AVERAGE (MATURITY) LIFE</b>	<b>0 YEARS</b>
<b>NET INTEREST RATE</b>	<b>0.000%</b>
<b>COST SAVINGS</b>	<b>\$ 38,896</b>
<b>AVERAGE ANNUAL REQUIREMENT</b>	<b>\$0</b>



**Wellman  
62689 Nitrate and Fluoride Removal  
Engineering and Environmental Review**

**Engineering:**

Key Issues:

Water loss is greater than 15 percent. This project addresses both water loss and a water quality issue for which the City has been in violation of compliance with TCEQ regulations.

Project Need/Description

The City of Wellman (City) produces water from five water wells, all of which produce water that exceeds the Maximum Contaminant Level (MCL) for arsenic, nitrate, and fluoride. The City currently uses an arsenic removal system, but it does not address nitrate and fluoride, and the arsenic removal system is expensive to maintain. The City also experiences water loss greater than 15 percent, primarily from real losses, and the City's 2014 Water Loss Audit exceeds their threshold for apparent loss.

The City proposes to plan, design, and construct a reverse osmosis (RO) facility to remove the constituents from their existing water supply. Proposed improvements include a new ground storage tank, well houses and meters, enlargement of the treatment building, a 1,250-foot long pipeline to convey RO backwash water to the wastewater treatment facility, a backup generator, a Supervisory Control and Data Acquisition system, and appurtenances. The City also intends to pursue water meter replacement.

**Project Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Closing	7/15/2016
Engineering Feasibility Report Completion (End of Planning Phase)	11/15/2016
Design Phase Complete	5/15/2017
Start of Construction	7/15/2017
Construction Completion	12/15/2017

**Environmental Section:**

Key Issues:

None known at this time.

Environmental Summary:

Pursuant to the requirements of 31 Texas Administrative Code § 371.41, the environmental review of the proposed project has been completed. The Executive Administrator issued a Categorical Exclusion on April 6, 2016. The proposed project is in compliance with the National Environmental Policy Act.



**Project Budget Summary**  
Wellman  
62689 - Nitrate and Fluoride Removal

Budget Items	This Commitment	TWDB Funds	Total
<b>Construction</b>			
Construction	\$802,500.00	\$802,500.00	\$802,500.00
<b>Subtotal for Construction</b>	<b>\$802,500.00</b>	<b>\$802,500.00</b>	<b>\$802,500.00</b>
<b>Basic Engineering Services</b>			
Construction Engineering	\$20,000.00	\$20,000.00	\$20,000.00
Design	\$68,500.00	\$68,500.00	\$68,500.00
Planning	\$20,000.00	\$20,000.00	\$20,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$108,500.00</b>	<b>\$108,500.00</b>	<b>\$108,500.00</b>
<b>Special Services</b>			
Application	\$7,000.00	\$7,000.00	\$7,000.00
Environmental	\$15,000.00	\$15,000.00	\$15,000.00
Geotechnical	\$3,500.00	\$3,500.00	\$3,500.00
Inspection	\$25,000.00	\$25,000.00	\$25,000.00
O&M Manual	\$5,000.00	\$5,000.00	\$5,000.00
Permits	\$5,000.00	\$5,000.00	\$5,000.00
Project Management (by engineer)	\$8,827.00	\$8,827.00	\$8,827.00
Surveying	\$8,000.00	\$8,000.00	\$8,000.00
Testing	\$5,500.00	\$5,500.00	\$5,500.00
Water Conservation Plan	\$1,500.00	\$1,500.00	\$1,500.00
<b>Subtotal for Special Services</b>	<b>\$84,327.00</b>	<b>\$84,327.00</b>	<b>\$84,327.00</b>
<b>Fiscal Services</b>			
Bond Counsel	\$9,500.00	\$9,500.00	\$9,500.00
Financial Advisor	\$18,300.00	\$18,300.00	\$18,300.00
Issuance Costs	\$4,600.00	\$4,600.00	\$4,600.00
Loan Origination Fee	\$3,081.00	\$3,081.00	\$3,081.00
<b>Subtotal for Fiscal Services</b>	<b>\$35,481.00</b>	<b>\$35,481.00</b>	<b>\$35,481.00</b>
<b>Other</b>			
Land/Easements Acquisition	\$15,000.00	\$15,000.00	\$15,000.00
Project Legal Expenses	\$15,000.00	\$15,000.00	\$15,000.00
<b>Subtotal for Other</b>	<b>\$30,000.00</b>	<b>\$30,000.00</b>	<b>\$30,000.00</b>
<b>Contingency</b>			
Contingency	\$61,846.00	\$61,846.00	\$61,846.00
<b>Subtotal for Contingency</b>	<b>\$61,846.00</b>	<b>\$61,846.00</b>	<b>\$61,846.00</b>
<b>Total</b>	<b>\$1,122,654.00</b>	<b>\$1,122,654.00</b>	<b>\$1,122,654.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$1,122,654 TO THE CITY OF WELLMAN  
FROM THE DRINKING WATER STATE REVOLVING FUND  
THROUGH THE PROPOSED PURCHASE OF  
\$140,000 CITY OF WELLMAN, TEXAS COMBINATION TAX AND SURPLUS SYSTEM  
REVENUE CERTIFICATES OF OBLIGATION,  
PROPOSED SERIES 2016  
AND  
\$982,654 IN LOAN FORGIVENESS

(16- )

WHEREAS, the City of Wellman (City) has filed an application for financial assistance in the amount of \$1,122,654 from the Drinking Water State Revolving Fund (DWSRF) to finance the planning, acquisition, design, and construction of certain water system improvements identified as Project No. 62689; and

WHEREAS, the City seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of \$140,000 Combination Tax and Surplus System Revenue Certificates of Obligation, Proposed Series 2016 (together with all authorizing documents (Obligations),) and the execution of a Loan Forgiveness Agreement in an amount of \$982,654, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the City has offered a pledge of tax and surplus system revenues of the waterworks and sewer 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 § 371.13; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and/or taxes pledged by the City will be sufficient to meet all the Obligations assumed by the City, in accordance with Texas Water Code § 15.607;
2. that the application and assistance applied for meet the requirements of the Safe Drinking Water Act, 42 U.S.C. §§ 300f *et seq.* as well as state law, in accordance with Texas Water Code § 15.607;
3. that the City 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;

4. that the TWDB has approved a regional water plan for the region of the state that includes the area benefiting from the project and the needs to be addressed by the project will be addressed in a manner that is consistent with the approved regional and state water plans, as required by Texas Water Code § 16.053(j);
5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the City and filed with the TWDB in accordance with Texas Water Code § 16.053(j);
6. that the City meets the definition of Disadvantaged Community in 31 TAC § 371.1(24) and is therefore eligible for subsidy through the DWSRF;
7. that the City meets the definition of a small water system in accordance with 31 TAC § 371.1(60) and the current Intended Use Plan, and is therefore eligible for subsidy through the DWSRF; and
8. that the Executive Administrator issued a Categorical Exclusion on April 6, 2016, such findings being subject to the standard emergency discovery conditions for threatened and endangered species and cultural resources in the Project contract documents. The TWDB concurs with the environmental finding issued by the Executive Administrator.

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

A commitment is made by the TWDB to the City of Wellman for financial assistance in the amount of \$1,122,654 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of \$140,000 Combination Tax and Surplus System Revenue Certificates of Obligation, Proposed Series 2016 and the execution of a Loan Forgiveness Agreement in the amount of \$982,654. This commitment will expire on November 30<sup>th</sup>, 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 City;
3. this commitment is contingent upon the City's compliance with all applicable requirements contained in 31 TAC Chapter 371;

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 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;
6. 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;
7. the Obligations must include a provision requiring the City 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 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 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;

11. 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;
12. 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;
13. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the City 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 City execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
15. the TWDB retains the option to purchase the Obligations in separate lots and/or on an installment basis, with delivery of the purchase price for each installment to be paid against delivery of the relevant installment of Obligations as approved by the Executive Administrator;

#### Conditions Related To Tax-Exempt Status

16. 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;
17. the City'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 City when rendering this opinion;
18. 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 of 1986, as amended (Code) and the Treasury Regulations promulgated thereunder (Regulations);
19. 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;
20. 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; and

- 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;
- 21. 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;
- 22. 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;
- 23. 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;
- 24. 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;
- 25. 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;

State Revolving Fund Conditions

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

29. 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 City will adhere to the approved project schedule;
30. The Obligations and Loan Forgiveness Agreement must contain a covenant that the City will abide by all applicable construction contract requirements related to the use of iron and steel products produced in the United States, as required by the 2014 Federal Appropriations Act and related State Revolving Fund Policy Guidelines;

#### Drinking Water State Revolving Fund Conditions

31. prior to or at closing, the City shall pay a 2.25% origination fee to the TWDB calculated pursuant to 31 TAC Chapter 371;
32. prior to closing, the Texas Commission on Environmental Quality, must make a determination, the form and substance of which is satisfactory to the Executive Administrator, that the City has demonstrated the necessary financial, managerial, and technical capabilities to proceed with the project or projects to be funded with the proceeds of these Obligations;
33. prior to release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the City 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;

#### Pledge Conditions for the Loan

34. 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;

- ii. 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
- iii. 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;

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

Special Conditions:

- 35. prior to closing, the City shall execute a Loan Forgiveness Agreement in a form and substance acceptable to the Executive Administrator;
- 36. the Loan Forgiveness Agreement must include a provision stating that the City shall return any loan forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator; and
- 37. the City must comply with the standard emergency discovery conditions for threatened and endangered species and cultural resources, as more fully specified in the final environmental finding of the Executive Administrator.

APPROVED and ordered of record this 5<sup>th</sup> day of May, 2016.

TEXAS WATER DEVELOPMENT BOARD

\_\_\_\_\_  
Bech K. Bruun, Chairman

DATE SIGNED: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Kevin Patteson  
Executive Administrator

# WATER CONSERVATION REVIEW

Entity: \_\_\_\_\_

Review date: \_\_\_\_\_

**WATER CONSERVATION PLAN DATE:** **Approvable**      **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
<b>Baseline</b>				
<b>5-year Goal</b>				
<b>10-year Goal</b>				

**WATER LOSS AUDIT YEAR:**

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

**WATER LOSS THRESHOLDS:**

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

Does the applicant meet Water Loss Threshold requirements?      Yes      No      NA

**ADDITIONAL INFORMATION:**

**STAFF NOTES AND RECOMMENDATIONS:**

## DEFINITIONS

**Adopted** refers to a water conservation plan that meets the minimum requirements of the water conservation plan rules and has been formally approved and adopted by the applicant's governing body.

**Apparent loss** refers to unauthorized consumption, meter inaccuracy, billing adjustments, and waivers.

**Approvable** refers to a water conservation plan that substantially meets the minimum requirements of the water conservation plan rules but has not yet been adopted by the applicant's governing body.

**Best Management Practices** are voluntary efficiency measures that save a quantifiable amount of water, either directly or indirectly, and that can be implemented within a specific time frame.

**GPCD** means gallons per capita per day.

**Infrastructure Leakage Index (ILI)** is the current annual real loss divided by the unavoidable annual real loss (theoretical minimum real loss) and only applies to utilities with more than 5,000 connections, average pressure greater than 35 psi, and a connection density of more than 32 connections per mile. The **ILI** is recommended to be less than 3 if water resources are greatly limited and difficult to develop, between 3 and 5 if water resources are adequate to meet long-term needs but water conservation is included in long-term water planning, and between 5 and 8 if water resources are plentiful, reliable, and easily extracted. The **ILI** is recommended as a benchmarking tool, but until there is increased data validity of the variables used in the calculation, the **ILI** should be viewed with care.

**NA** means not applicable.

**Produced water** is the total amount of water purchased or produced by the utility.

**Real loss** comes from main breaks and leaks, storage tank overflows, customer service line breaks, and leaks.

**Residential GPCD** is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

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

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

**Water loss** is the difference between the input volume and the authorized consumption within a water system. Water Loss consists of real losses and apparent losses.

**Water Loss Thresholds** are levels of real and apparent water loss determined by the size and connection density of a retail public utility, at or above which a utility receiving financial assistance from the Texas Water Development Board must use a portion of that financial assistance to mitigate the utility's system water loss.

**City of Wellman,  
Terry County**

