

# Texas Water Development Board

## PROJECT FUNDING REQUEST

BOARD DATE: July 21, 2016

TEAM MANAGER: Lee Huntoon

<b>APPLICANT</b>	El Paso Water Utilities Public Service Board
<b>TYPE OF ASSISTANCE</b>	\$100,000,000 Loan-Proposed Series 2016A \$50,000,000 Loan-Proposed Series 2017
<b>LEGAL PLEDGE</b>	First lien on net revenues of combined waterworks and sewer system

**STAFF RECOMMENDATION**

Approve                       No Action

**ACTION REQUESTED**

Approve by resolution, a request from the El Paso Water Utilities Public Service Board (El Paso County) for a \$150,000,000 multi-year, low interest loan commitment from the State Water Implementation Revenue Fund for Texas to finance land and water rights acquisition.

**PROJECT**

Bone Spring - Victorio Peak Aquifer Land & Water Rights Acquisition  
Project Number 51012

**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. SWIFT projects presented for consideration have been scored and ranked utilizing a prioritization criteria outlined in Texas Administrative Code Title 31 § 363.1304 and are included on the prioritized list of projects approved by the Board on April 11, 2016.

In order to secure water resources that will provide sustainable water solutions, the El Paso Water Utilities Public Service Board (EPWU), on behalf of the City of El Paso (City) will acquire ranch and farm land with associated water rights above the Bone Spring-Victorio Peak Aquifer. Ownership of the properties will give the EPWU the ability to manage the land and water use, provide resource protection, and eventually develop the water supply when needed by the EPWU.

<b>Multi-Year Commitment</b>	<b>Expiration Date</b>
<b>\$100,000,000 Series 2016A</b>	<b>December 31, 2016</b>
<b>\$50,000,000 Series 2017</b>	<b>December 31, 2017</b>

## **FINANCIAL**

### Key Issues

None.

### Multi-year Commitments

The SWIFT program has the ability to offer applicants multi-year commitments. This flexibility allows the Texas Water Development Board (TWDB) to manage program demand while allowing the applicant to fund large projects over time. Each annual commitment installment will have its own expiration date and the applicable subsidy will be applied for a maximum of five funding year cycles from the time of initial Board commitment.

The EPWU has requested multi-year commitments over a period of two years in 2016 and 2017. The subsidy rate of 35% applicable to 20 year loans will be available for five cycles.

### Pledge and Repayment

The EPWU is pledging parity first lien on net revenues of the combined waterworks and sewer system. The EPWU net revenues available for debt service are sufficient to meet existing and proposed obligations.

### Cost Savings

Based on a 20-year maturity and current interest rates, the EPWU could save approximately \$11,363,381 over the life of the loan of \$100,000,000 Series 2016A.

### Internal Risk Score

Staff assigns a 2A to the EPWU, and the proposed project to be funded by the TWDB. This means that the EPWU payment capacity is strong.

The EPWU has solid financial sustainability based on the indicators within this subsection. The debt service coverage ratio of 2.7 is very high and the fund ratio of 56% demonstrates strong growth within the fund balance. The EPWU's assessed valuation per capita is \$56,269 and the years of existing net fixed assets are solid but standard.

The qualitative and socioeconomic indicators of the EPWU are also solid. The cost of water and wastewater in the EPWU is very low with a household cost factor of 1.3%. Median household income is solid with the EPWU's being 80% of the State's. The EPWU population has grown at 3.1% since 2010 while the State has grown 3.6% as a whole. The EPWU's service revenues are concentrated among the top ten customers for water service at 19.1%; but are more diversified for wastewater at 11.5%. The risk presented by the concentration in water service revenues is minor because all but one of the top ten customers are governmental, a utility, or a school district. Only 2.7% of revenues is attributed to Western Refining, a crude oil refinery. The EPWU's service area unemployment rate in April of 2016 is 4.1%; slightly lower than the state at 4.2%. The EPWU has a typical level of liquidity with 63 days of cash on hand to cover operating expenditures.

The EPWU is also very strong where debt indicators are concerned. Debt per capita is very low for a utility serving a city of this size at \$684. A mid-range would be \$2,000.

With extremely strong financial sustainability, solid socioeconomic indicators, and very strong debt indicators, staff has assigned a risk score of 2A.

## **LEGAL**

### Key Issues

None.

### Conditions

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

- Reasonable expectation of water rights; and
- Phase I Environmental.

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>	El Paso Water Utilities Public Service Board
<b>Program</b>	State Water Implementation Fund of Texas-SWIFT
<b>Commitment Code</b>	LM16045, LM17045
<b>Project Number</b>	51012
<b>Intended Use Plan/ Fund Year</b>	2016
<b>Fund Number</b>	0361
<b>Type of Pledge</b>	2-Revenue
<b>Revenue Pledge Level</b>	First
<b>Legal Description</b>	El Paso TX Water and Sewer Revenue Bonds, 2016A El Paso TX Water and Sewer Revenue Bonds, 2017
<b>Tax-exempt or Taxable</b>	Tax-exempt
<b>Refinance</b>	No
<b>Outlay Requirement</b>	No
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	N/A
<b>Population</b>	660,795
<b>Rural</b>	Yes
<b>Water Connections</b>	224,924
<b>Wastewater Connections</b>	224,924
<b>Qualifies as Disadvantaged</b>	No
<b>Disadvantaged Level</b>	9
<b>Clean Water State Revolving Fund Type</b>	N/A
<b>SWIFT Financing Type</b>	Low Interest Loan
<b>SWIFT Characteristic</b>	N/A
<b>Financial Managerial &amp; Technical Complete</b>	N/A
<b>Funding Phase Code</b>	Acquisition
<b>Pre-Design</b>	No
<b>Project Consistent with Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Adopted
<b>Water Rights Certification Required</b>	N/A
<b>Internal Risk Score</b>	2A
<b>External Ratings (for SRF rates)</b>	
<b>Standard and Poor's</b>	AA
<b>Moody's</b>	AA
<b>Fitch</b>	N/A
<b>Special Issues</b>	Multi-year commitment

**Project Team**

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

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY

El Paso Water Utilities Public Service Board

**\$100,000,000 El Paso TX Water and Sewer Bonds, Proposed Series 2016A**

Dated Date: 11/15/2016      Source: SWIFT-LOW-20YR  
 Delivery Date: 11/15/2016      Insurance: No  
 First Interest: 3/1/2017      Case: Revenue  
 First Principal: 3/1/2017      Admin.Fee: N/A  
 Last Principal: 3/1/2036      Admin. Fee Payment Date: N/A  
 Fiscal Year End: 02/28      Required Coverage: 1.1

**\$50,000,000 El Paso TX Water and Sewer Bonds, Proposed Series 2017**

Dated Date: 11/15/2017      Source: SWIFT-LOW-20YR  
 Delivery Date: 11/15/2017      Insurance: No  
 First Interest: 3/1/2018      Case: Revenue  
 First Principal: 3/1/2018      Admin.Fee: N/A  
 Last Principal: 3/1/2037      Admin. Fee Payment Date: N/A  
 Fiscal Year End: 2/28      Required Coverage: 1.1

FISCAL YEAR	PROJECTED NET SYSTEM REVENUES	CURRENT DEBT SERVICE	\$100,000,000 ISSUE			\$50,000,000 ISSUE			TOTAL DEBT SERVICE	ACTUAL COVERAGE		
			PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE			INTEREST PAYMENT	TOTAL PAYMENT
2018	85,360,835	47,881,439	500,000	0.65%	1,366,186	1,866,186	-	0.00%	-	-	49,747,625	1.72
2019	85,360,835	48,072,983	500,000	0.73%	1,716,645	2,216,645	250,000	0.73%	733,412	983,412	51,273,040	1.66
2020	85,360,835	47,904,678	2,000,000	0.82%	1,706,620	3,706,620	250,000	0.82%	921,475	1,171,475	52,782,773	1.62
2021	85,360,835	46,719,628	2,000,000	0.91%	1,689,320	3,689,320	1,000,000	0.91%	915,900	1,915,900	52,324,848	1.63
2022	85,360,835	47,294,989	2,000,000	0.99%	1,670,320	3,670,320	1,000,000	0.99%	906,400	1,906,400	52,871,709	1.61
2023	85,360,835	43,628,798	5,000,000	1.08%	1,633,420	6,633,420	1,000,000	1.08%	896,050	1,896,050	52,158,268	1.64
2024	85,360,835	40,220,828	5,000,000	1.16%	1,577,420	6,577,420	2,500,000	1.16%	876,150	3,376,150	50,174,398	1.70
2025	85,360,835	40,179,006	6,000,000	1.23%	1,511,520	7,511,520	2,500,000	1.23%	846,275	3,346,275	51,036,801	1.67
2026	85,360,835	35,869,795	6,000,000	1.30%	1,435,620	7,435,620	2,500,000	1.30%	814,650	3,314,650	46,620,065	1.83
2027	85,360,835	35,344,134	6,200,000	1.36%	1,354,460	7,554,460	2,500,000	1.36%	781,400	3,281,400	46,179,994	1.85
2028	85,360,835	32,773,212	6,200,000	1.56%	1,263,940	7,463,940	2,500,000	1.56%	744,900	3,244,900	43,482,052	1.96
2029	85,360,835	26,023,919	6,200,000	1.70%	1,162,880	7,362,880	2,500,000	1.70%	704,150	3,204,150	36,590,949	2.33
2030	85,360,835	21,282,651	6,200,000	1.82%	1,053,760	7,253,760	2,500,000	1.82%	660,150	3,160,150	31,696,561	2.69
2031	85,360,835	14,998,094	6,400,000	1.93%	935,580	7,335,580	3,000,000	1.93%	608,450	3,608,450	25,942,124	3.29
2032	85,360,835	11,346,263	6,400,000	2.03%	808,860	7,208,860	3,000,000	2.03%	549,050	3,549,050	22,104,173	3.86
2033	85,360,835	7,280,331	6,600,000	2.10%	674,600	7,274,600	3,500,000	2.10%	481,850	3,981,850	18,536,781	4.60
2034	85,360,835	7,272,412	6,600,000	2.18%	533,360	7,133,360	3,500,000	2.18%	406,950	3,906,950	18,312,722	4.66
2035	85,360,835	3,784,994	6,600,000	2.23%	387,830	6,987,830	4,000,000	2.23%	324,200	4,324,200	15,097,024	5.65
2036	85,360,835	1,683,963	6,600,000	2.29%	238,670	6,838,670	4,000,000	2.29%	233,800	4,233,800	12,756,433	6.69
2037	85,360,835	-	7,000,000	2.33%	81,550	7,081,550	4,000,000	2.33%	141,400	4,141,400	11,222,950	7.61
2038	85,360,835	-	-	0.00%	-	-	4,000,000	2.37%	47,400	4,047,400	4,047,400	21.09
		\$ 559,562,117	\$ 100,000,000		\$ 22,802,561	\$ 122,802,561	\$ 50,000,000		\$ 12,594,012	\$ 62,594,012	\$ 744,958,690	

\$100,000,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	11.95 YEARS
NET INTEREST RATE	1.909%
COST SAVINGS	\$11,363,381
AVERAGE ANNUAL REQUIREMENT	\$6,140,128

\$50,000,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	12.41 YEARS
NET INTEREST RATE	2.030%
COST SAVINGS	\$ 6,306,118
AVERAGE ANNUAL REQUIREMENT	\$3,129,701

TOTAL AVERAGE ANNUAL REQUIREMENTS
\$35,474,223

Disclaimer: This is a working document and is provided as a courtesy. All information contained herein, including the proposed interest rate, is subject to change upon further review of the TWDB in accordance with 31 Texas Administrative Code Chapters 363, 371, 375, or 384, as applicable.

**El Paso Water Utilities Public Service Board  
51012 Bone Spring - Victorio Peak Aquifer  
Land & Water Rights Acquisition  
Engineering and Environmental Review**

**Engineering:**

Key Issues:

None.

Project Need/Description

Need: El Paso Water Utilities Public Service Board (EPWU) is pursuing funding through the State Water Implementation Fund for Texas program to secure land and groundwater resources in the Bone Spring-Victorio Peak Aquifer that will provide a supplementary water source for the growing community's future. With this funding, EPWU will acquire tracts of land and water rights necessary to meet this goal.

Project Description: The proposed land and water rights acquisition project consists of acquiring ranch and farm land with associated water rights above the Bone Spring-Victorio Peak Aquifer approximately 90 miles due east of El Paso, Texas.

**Project Schedule:**

<b>Project Task</b>	<b>Schedule Date</b>
Closing	11/15/2016
Property Purchase	12/15/2016

**Environmental Section:**

Key Issues:

None known at this time.

Environmental Summary:

The proposed loan is for land and water rights acquisition only. Pursuant to the requirements of 31 Texas Administrative Code (TAC) § 363.14, funds for land and water rights acquisition will not be released until the Executive Administrator has issued a favorable environmental determination. That determination would apply to the land and water rights acquisition only. Should the applicant obtain funds for design or construction in the future, those funds would not be released until an environmental review of the project as then proposed has been completed and a separate, favorable environmental determination has been issued by the Executive Administrator.



**Project Budget Summary**  
**El Paso Water Utilities Public Service Board**  
**51012 - Bone Spring - Victorio Peak Aquifer Land & Water Rights**  
**Acquisition**

Budget Items	Previous Commitments	2016 Commitment	2017 Commitment	TWDB Funds	Local and Other Funds	Total
<b>Construction</b>						
<b>Subtotal for Construction</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Basic Engineering Services</b>						
<b>Subtotal for Basic Engineering Services</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Special Services</b>						
Environmental	\$0.00	\$0.00	\$0.00	\$0.00	\$50,000.00	\$50,000.00
Special Service Other (Describe)	\$0.00	\$0.00	\$0.00	\$0.00	\$25,000.00	\$25,000.00
Surveying	\$0.00	\$0.00	\$0.00	\$0.00	\$100,000.00	\$100,000.00
<b>Subtotal for Special Services</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$175,000.00</b>	<b>\$175,000.00</b>
<b>Fiscal Services</b>						
Bond Counsel	\$0.00	\$0.00	\$0.00	\$0.00	\$180,000.00	\$180,000.00
Financial Advisor	\$0.00	\$0.00	\$0.00	\$0.00	\$180,000.00	\$180,000.00
Fiscal/Legal	\$0.00	\$0.00	\$0.00	\$0.00	\$135,000.00	\$135,000.00
<b>Subtotal for Fiscal Services</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$495,000.00</b>	<b>\$495,000.00</b>
<b>Other</b>						
Land/Easements Acquisition	\$50,000,000.00	\$100,000,000.00	\$50,000,000.00	\$200,000,000.00	\$19,465,000.00	\$219,465,000.00
<b>Subtotal for Other</b>	<b>\$50,000,000.00</b>	<b>\$100,000,000.00</b>	<b>\$50,000,000.00</b>	<b>\$200,000,000.00</b>	<b>\$19,465,000.00</b>	<b>\$219,465,000.00</b>
<b>Total</b>	<b>\$50,000,000.00</b>	<b>\$1,000,000.00</b>	<b>\$50,000,000.00</b>	<b>\$200,000,000.00</b>	<b>\$20,135,000.00</b>	<b>\$220,135,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE TO  
THE EL PASO WATER UTILITIES PUBLIC SERVICE BOARD  
ACTING ON BEHALF OF THE CITY OF EL PASO  
IN THE FORM OF A MULTI-YEAR COMMITMENT  
FROM THE STATE WATER IMPLEMENTATION REVENUE FUND FOR TEXAS  
THROUGH THE PROPOSED PURCHASE OF  
\$150,000,000 CITY OF EL PASO, TEXAS WATER AND SEWER REVENUE BONDS,  
PROPOSED SERIES 2016A AND PROPOSED SERIES 2017

(16- )

WHEREAS, the El Paso Water Utilities Public Service Board, acting on behalf of the City of El Paso, Texas (EPWU) has filed an application for financial assistance in the amount of \$150,000,000 from the State Water Implementation Revenue Fund for Texas (SWIRFT) to finance the acquisition of certain water supply project(s) identified as Project No. 51012; and

WHEREAS, the EPWU seeks financial assistance from the Texas Water Development Board (TWDB) in the form of a multi-year commitment through the TWDB's proposed purchase of \$150,000,000 City of El Paso, Texas Water and Sewer Revenue Bonds, Proposed Series 2016A and Proposed Series 2017 (together with all authorizing documents (Obligations)), all as more specifically set forth in the application and in recommendations of the Executive Administrator's staff; and

WHEREAS, the City of El Paso, (City) has offered a pledge of a first lien on the net revenues of the City's water and sewer system as sufficient security for the repayment of the Obligations; and

WHEREAS, interest rate subsidies are available to the City at the following levels: 35% for a loan of a term of 20 years, 25% for a loan of a term of 21 to 25 years, and 20% for a loan of a term of 26 to 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 § 6.051, in accordance with Texas Water Code § 15.474(a);
3. that a water conservation plan has been submitted and implemented in accordance with Water Code § 11.1271 and 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 or EPWU as applicable, and filed with the TWDB in accordance with 31 TAC § 358.6;
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 the El Paso Water Utilities Public Service Board, acting on behalf of the City of El Paso, Texas, for financial assistance in the amount of \$150,000,000 from the State Water Implementation Revenue Fund for Texas, to be evidenced by the TWDB's proposed purchase of City of El Paso, Texas Water and Sewer Revenue Bonds

- a) \$100,000,000 Proposed Series 2016A, to expire on December 31, 2016; and
- b) \$50,000,000 Proposed Series 2017, to expire on December 31, 2017.

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 of El Paso;
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 § 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 § 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;
21. the Obligations must require the accumulation of a reserve fund of no less than average annual debt service requirements, to be accumulated in equal monthly installments over

the initial sixty (60) months;

22. if the City has existing revenue obligations with the same pledge of security as the proposed Obligations that will remain outstanding after any loan(s) made by the TWDB pursuant to this commitment, the Obligations must contain a provision providing that the lien or liens securing the Obligations issued to the TWDB shall be at least on a parity with lien or liens securing such outstanding obligations;
23. the City is permitted to issue additional bonds with the same security (Additional Bonds) as pledged for the Obligations if:
  - a. the City is not, at any time, in default as to any covenant, condition, or obligation prescribed by an ordinance authorizing the issuance of any bonds payable from and secured by a first lien on a pledge of the net revenues;
  - b. Additional Bonds are made to mature on March 1 in each of the years in which they are scheduled to mature;
  - c. the net earnings of the City water and sewer system for any consecutive period of 12 months of the 15 months next preceding the month of the date of the Additional Bonds then to be issued, or for the City's completed fiscal year next preceded the date of such Additional Bonds, are equal to at least 1.25 times the maximum annual principal and interest requirements of all bonds to be outstanding after the issuance of the Additional Bonds, as such net earnings are shown by a report by a certified public accountant; and
  - d. the amount to be accumulated and maintained in the City's reserve fund shall be increased to an amount not less than the average annual requirements for the payment of principal and interest on the Obligations, any previously issued senior lien bonds, and the Additional Bonds, such additional amount to be accumulated in equal monthly installments during a period not to exceed five years and one month.

**Conditions to Close or for Release of Funds:**

24. 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;
25. 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;

26. 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;
27. prior to the 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;
28. 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;
29. 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;
30. 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;
31. 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:**

32. 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;
33. prior to the release of funds for acquisition, the City shall submit a Phase I Environmental Site Assessment of the proposed project area in form and substance acceptable to the Executive Administrator.

APPROVED and ordered of record this, the 21st day of July, 2016.

TEXAS WATER DEVELOPMENT BOARD

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

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

ATTEST:

\_\_\_\_\_  
Jeff Walker  
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.

**El Paso PSB,  
El Paso County**

