Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: June 24, 2019 TEAM MANAGER: Lee Huntoon

APPLICANT	Borden County
TYPE OF ASSISTANCE	$1,285,000 Financing $700,000 Principal Forgiveness
LEGAL PLEDGE	Ad Valorem Tax and Surplus Net Revenues of the Water Utility System

STAFF RECOMMENDATION

☒ Approve ☐ No Action

ACTION REQUESTED

Approve by resolution a request from Borden County (Borden County) for $1,985,000 in financial assistance consisting of $1,285,000 in financing and $700,000 in principal forgiveness from the Drinking Water State Revolving Fund for the design and construction of an urgent need water treatment project.

PROJECT

Borden County Water Treatment Project
Project Number 62828

BACKGROUND

Borden County (County) is located approximately 60 miles southeast of Lubbock. With a population of 602 residents, the County's water utility serves 241 customers with 120 water connections within the town of Gail. The County's utility does not provide wastewater services. The County is also the birth place of Gail Borden the inventor of condensed milk.

The County's water supply exceeds maximum contaminant levels of arsenic and fluoride and is under a compliance order with the Environmental Protection Agency (EPA) to address these violations. The County proposes to install an arsenic and fluoride ion exchange treatment system, related controls, piping and appurtenances to address water quality issues. Pilot testing has already been completed and the Texas Commission on Environmental Quality has approved the proposed treatment system.

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE DECEMBER 31, 2019.

FINANCIAL

Key Issues

A special condition requiring a corrective action plan to be submitted prior to closing has been added due to no depreciation noted in the County's financial audit for the fiscal year that ended on December 31, 2017. The County is eligible for funding up to $1,285,000 with an interest rate of zero percent as an urgent need project and $700,000 in principal forgiveness.

Pledge and Repayment

The County is pledging ad valorem taxes and surplus net revenues for the repayment of the proposed financing. The County's current average monthly water rate is $51.35, and the County collects an interest and sinking fund tax (I&S) at a rate of $0.0400 per $100 assessed valuation. The I&S rate generates approximately $140,554 annually, assuming a tax collection rate of 90 percent. However, actual tax collections are much higher as the County's historical tax collection rate has well exceeded 99 percent over the past five years. Actual collections at 99 percent generate approximately $170,900 annually.

The County subsidizes a portion of its outstanding debt with payments in lieu of taxes (PILOT) from Wind Farms. The PILOT payments, subject to Chapters 312 and 313 of the Texas Property Tax Code, allow some counties to reduce the amount of taxes paid by favored businesses that locate or expand within certain geographic boundaries. Total PILOT payments for the County average $178,732 per year over the next eight years. While the PILOT payments reduce the County's outstanding debt burden, these payments were not considered for modeling purposes because they are not included in the pledge for the proposed Texas Water Development Board (TWDB) debt.

The County adjusts its I&S on an annual basis, as needed and plans to continue to adjust its I&S rate to maintain debt service requirements. The max tax rate the County could levy is $0.80 per $100 assessed valuation. The County's current total tax rate (maintenance and operations and I&S) is $0.7188. Maintaining a conservative tax collection rate estimate of 90 percent for modeling purposes, the County would need to levy a tax rate of $0.0905 for the first year of principal repayment, which would exceed its current maximum tax rate by $0.0093. However, instead of adjusting the I&S rate, the County could adjust the maintenance and operations rate to stay within maximum tax rate limits. In addition, the combination pledge would allow flexibility in debt repayment if tax limits are met. The County projects that no increase will be needed since actual collections exceed 99 percent and PILOT payments significantly reduce outstanding debt, and the County may not need to adjust its I&S in the first year of principal repayment. With tax collections at 99 percent and reducing outstanding debt with PILOT payments, the required tax rate would be $0.0314 per $100 assessed valuation, which is lower than the County's current I&S.

Based on staff's analysis of financial documentation received, current rates and charges would produce revenues that are sufficient to meet existing and proposed debt service requirements. In addition, the combination pledge allows the County flexibility with debt repayment.

Principal Forgiveness
The County qualifies for $700,000 in principal forgiveness as a very small system and urgent need project.

Cost Savings
Based on a 25-year maturity and current interest rates, the County could save approximately $522,713 over the life of the financing. The County is also saving $700,000 in principal forgiveness.

Internal Risk Score
Staff assigns a 2B to the County, and the proposed project to be funded by the Texas Water Development Board. This means that the County's payment capacity is adequate.

The results of the County's financial sustainability indicators are sufficient. These more heavily weighted risk score indicators show the County's short-term and long-term ability to repay the debt. The revenues available for debt service provide a coverage ratio representing 0.57 times the current and proposed debt service in the first year of principal repayment. However, with the aforementioned tax rate increase, the coverage ratio increases to 1.10 times. In addition, taxable assessed values of the property of the County have been increasing over the past three years, which has resulted in a high net taxable assessed valuation per capita of $648,551. Over 60 percent of the County's top ten taxpayers comprise of oil and gas customers, which contributes to the elevated assessed valuation.

The County's socioeconomic indicators are better than the state overall, with the exception of population. The County's population has declined at an average annual rate of 0.89 percent since 2010, compared to an increase at an annual rate of 1.24 percent for the population of the state overall. The County's median household income is $77,708 and is 36 percent higher than the median for the state overall. The average, unadjusted, unemployment rate for County was 2.6 percent in March 2019, compared to 3.5 percent for the state overall.

The County scored high on other indicators showing overall financial health and positive operating trends. The County has been able to retain its revenues, as evidenced by the increase in the cash balance of 27 percent over the last five years. Water system revenues are deposited under the general fund as the utility does not carry a cash balance. The County maintains strong reserves with unrestricted cash and short-term investments of approximately 785 days of the operating expenses of the utility system. Any amount over 250 days is considered to be a very high level of liquidity.

The household cost factor compares the annual cost of water and wastewater services, including any anticipated rate increases required to pay the proposed debt, to the median household income for the service area. The County's utility only provides water services. The County's household cost factor is 0.79 percent. The industry benchmark for the household cost factor is 1 percent for one service.

The County's overall debt burden is low, with all debt being tax-supported. The level of debt supported by taxes is 0.49 percent. A typical level of tax-supported debt ranges between 2 and 4.99 percent.

The County plans to adjust taxes as needed to support debt repayment and is currently subsidizing outstanding debt with PILOT payments. Additionally, the combination pledge provides the County with flexibility for debt payment in the future. Overall favorable socioeconomic factors, including positive operating trends, strong cash balances, and overall low debt levels support the assigned risk score of 2B.

LEGAL

Key Issues

None.

Conditions

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

- Corrective Action Plan,
- Executed principal forgiveness agreement; and
- Return surplus principal forgiveness funds.

Attachments:
1. Project Data Summary
2. Debt Service Schedule
3. Engineering/Environmental Review
4. Project Budget
5. Resolution (19-)
6. Water Conservation Review
7. Location Map

Project Data Summary

Responsible Authority	Borden County
Program	Drinking Water State Revolving Fund
Commitment Code	L1000961 (DWSRF – 0%) Financing LF1000962 (Principal Forgiveness)
Project Number	62828
Intended Use Plan Year	2019
Type of Pledge	3- Combo Tax and Rev
Revenue Pledge Level	Third
Legal Description	$1,285,000 Borden County, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2019; $700,000 Principal Forgiveness Agreement
Tax-exempt or Taxable	Tax-exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow
Population	602
Rural	Yes
Water Connections	120
Wastewater Connections	0
Qualifies as Disadvantaged	No
Disadvantaged Level	9
Clean Water State Revolving Fund Type	N/A
SWIFT Financing Type	N/A
SWIFT Characteristic	N/A
Financial Managerial & Technical Complete	Yes
Funding Phase Code	Design and Construction
Pre-Design	No
Project Consistent with Water Plan	Yes
Water Conservation Plan	Adopted
Water Rights Certification Required	No
Internal Risk Score	2B
External Ratings (for SRF rates)	
Standard and Poor's	Non-Rated
Moody's	Non-Rated
Fitch	Non-Rated
Special Issues	$500,000 Urgent Need Principal Forgiveness; $200,000 Very Small Systems Principal Forgiveness; Zero percent financing

Project Team

Team Manager	Lee Huntoon
Financial Analyst	Laura Jarzombek
Engineering Reviewer	Thomas Klein
Environmental Reviewer	Chris Caran
Attorney	Ashley Nwonuma

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
Borden County

$1,285,000, Borden County, Texas, Combination Tax and Surplus Revenue Certifiicates of Obligation, Proposed Series 2019

Dated Date:	**9/15/2019**	**Source:**	**DWSRF**
Delivery Date:	**9/15/2019**	**Rate:**	**0.00%**
First Interest:	**1/15/2020**	**IUP Year:**	**2019**
First Principal	**7/15/2020**	**Case:**	**Tax and Revenue**
Last Principal:	**7/15/2044**	**Admin.Fee:**	**$27,046**
Fiscal Year End:	**12/31**	**Admin. Fee Payment Date:**	**9/15/2019**
Required Coverage:	**1.1**	**Total Assessed Valuation:**	**$390,427,752**

						$1,285,000 ISSUE					
FISCAL YEAR	REQUIRED TAX RATE	TAX REVENUES WITH COLL. @ 90%	PROJECTED NET SYSTEM REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	TOTAL DEBT SERVICE	COVERAGE
2020	$0.0905	$318,048	$49,458	$367,506	$329,096	$5,000	-	-	$5,000	$334,096	1.10
2021	0.1046	367,556	$49,458	417,014	329,104	50,000	-	-	50,000	379,104	1.10
2022	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2023	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2024	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2025	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2026	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2027	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2028	0.0100	35,138	$49,458	84,596	-	50,000	-	-	50,000	50,000	1.69
2029	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2030	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2031	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2032	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2033	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2034	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2035	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2036	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2037	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2038	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2039	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2040	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2041	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2042	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2043	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
2044	0.0100	35,138	$49,458	84,596	-	55,000	-	-	55,000	55,000	1.54
				$3,587,615	$658,200	$1,285,000		$0	$1,285,000	$1,943,200	

AVERAGE (MATURITY) LIFE	**13.53 YEARS**
NET INTEREST RATE	**0.000%**
COST SAVINGS	**$ 1,382,897**
AVERAGE ANNUAL REQUIREMENT	**$77,728**

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. The TWDB does not function as a financial advisor to anyone in connection with this financing. The information contained in this document is used by TWDB staff to analyze the application for financing is illustrative only and does not constitute any guaranty of future rates. The TWDB makes no claim regarding the applicability of the information at closing, at which time actual rates will be set.

Texas Water Development Board

Borden County
62828 Borden County Water Treatment Project
Engineering and Environmental Review

Engineering:

Key Issues:

Pilot testing has already been completed and the Texas Commission on Environmental Quality has approved the proposed treatment system.

Project Need/Description

Need: The Borden County (County) water supply exceeds maximum contaminant levels of arsenic and fluoride and is under a compliance order with the Environmental Protection Agency (EPA) to address these violations.

Description: The County proposes to install an arsenic and fluoride ion exchange treatment system, related controls, piping and appurtenances to address water quality issues.

Project Schedule:

Project Task	Schedule Date
Closing	9/15/2019
Start of Construction	1/15/2020
Construction Completion	1/15/2021

Environmental Section:

Key Issues:

None known at this time.

Environmental Summary:

As set forth in the preliminary environmental information submitted by the applicant, there are no known environmental, social, or permitting issues that would preclude completion of the project. Based on this initial review, it is not anticipated that the proposed project's primary environmental impacts should be significant or adverse, nor should they affect implementation of the project.

Pursuant to the requirements of 31 Texas Administrative Code Chapter 371, Subchapter E, all financial assistance shall be conditioned that funding for design and construction of specific project elements will not be released until an environmental review has been completed and a favorable environmental determination has been issued.

Texas Water Development Board

Project Budget Summary

Borden County

62828 - Borden County Water Treatment Project

Budget Items	TWDB Funds	Total
Construction		
Construction	$1,485,000.00	$1,485,000.00
Subtotal for Construction	**$1,485,000.00**	**$1,485,000.00**
Basic Engineering Services		
Construction Engineering	$58,000.00	$58,000.00
Design	$10,000.00	$10,000.00
Subtotal for Basic Engineering Services	**$68,000.00**	**$68,000.00**
Special Services		
Inspection	$50,000.00	$50,000.00
Subtotal for Special Services	**$50,000.00**	**$50,000.00**
Fiscal Services		
Bond Counsel	$25,000.00	$25,000.00
Financial Advisor	$39,000.00	$39,000.00
Fiscal/Legal	$8,000.00	$8,000.00
Issuance Costs	$4,000.00	$4,000.00
Loan Origination Fee	$27,046.00	$27,046.00
Subtotal for Fiscal Services	**$103,046.00**	**$103,046.00**
Contingency		
Contingency	$278,954.00	$278,954.00
Subtotal for Contingency	**$278,954.00**	**$278,954.00**
Total	$1,985,000.00	$1,985,000.00

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
$1,985,000 TO BORDEN COUNTY
FROM THE DRINKING WATER STATE REVOLVING FUND
THROUGH THE PROPOSED PURCHASE OF
$1,285,000 BORDEN COUNTY, TEXAS,
COMBINATION TAX AND SURPLUS REVENUE CERTIFICATES OF OBLIGATION,
PROPOSED SERIES 2019
AND
$700,000 IN PRINCIPAL FORGIVENESS

(19 -)

WHEREAS, Borden County, Texas (County) has filed an application for financial assistance in the amount of $1,985,000 from the Drinking Water State Revolving Fund (DWSRF) to finance the design and construction of certain water system improvements identified as Project No. 62828; and

WHEREAS, the County seeks financial assistance from the Texas Water Development Board (TWDB) through the TWDB's proposed purchase of $1,285,000 Borden County, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2019 (together with all authorizing documents (Obligations)), and the execution of a Principal Forgiveness Agreement in an amount of $700,000, all as is more specifically set forth in the application and in recommendations of the TWDB's staff; and

WHEREAS, the County has offered a pledge of ad valorem taxes and surplus net revenues of the County's water utility system as sufficient security for the repayment of the Obligations; and

WHEREAS, the TWDB hereby finds:

1. that the revenue and taxes pledged by the County will be sufficient to meet all the Obligations assumed by the County, 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 County 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); and

5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the County and filed with the TWDB in accordance with Texas Water Code § 16.053(j); and

6. that the County meets the definition of a very small system in accordance with the current Intended Use Plan, and is therefore eligible for principal forgiveness as a very small system in the amount of $200,000; that the project qualifies as an Urgent Need project in accordance with the applicable Intended Use Plan and 31 TAC § 371.21(f) and as an urgent need project, the project is therefore eligible for principal forgiveness in the amount of $500,000 and a reduced interest rate; the County is therefore eligible for principal forgiveness through the DWSRF in a total amount not to exceed $700,000;

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

A commitment is made by the TWDB to the Borden County for financial assistance in the amount of $1,985,000 from the Drinking Water State Revolving Fund through the TWDB's proposed purchase of $1,285,000 Borden County, Texas, Combination Tax and Surplus Revenue Certificates of Obligation, Proposed Series 2019, and the execution of a Principal Forgiveness Agreement in the amount of $700,000. This commitment will expire on December 31, 2019.

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 County;

3. this commitment is contingent upon the County's compliance with all applicable requirements contained in 31 TAC Chapter 371;

4. the Obligations must provide that the County agrees to comply with all of the conditions set forth in the TWDB Resolution, which conditions are incorporated herein;

5. 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;

6. the County, 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 County'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 County's Obligations, if the TWDB sells or otherwise transfers such Obligations, and the beneficial owners of the TWDB's bonds if the County is an obligated person with respect to such bonds under SEC Rule 15c2-12;

7. the Obligations must contain a provision requiring the County to levy a tax and/or maintain and collect sufficient rates and charges, as applicable, to produce system funds 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;

8. the Obligations must include a provision requiring the County to use any loan proceeds from the Obligations that are determined to be remaining unused funds, which are those funds unspent after the original approved project is completed, for enhancements to the original project that are explicitly approved by the Executive Administrator or if no enhancements are authorized by the Executive Administrator, requiring the County to submit a final accounting and disposition of any unused funds;

9. the Obligations must include a provision requiring the County to use any loan proceeds from the Obligations that are determined to be surplus funds remaining after completion of the project and completion of a final accounting 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) deposit into a reserve fund;

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 County 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 County 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 County, its contractors, consultants, agents, officials and employees as a result of activities relating to the project to the extent permitted by law;

13. prior to closing, the County shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges and/or the levy of an interest and sinking tax rate (if applicable) sufficient for the repayment of all system debt service requirements;

14. prior to closing, and if not previously provided with the application, the County 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;

15. prior to closing, when any portion of the financial assistance is to be held in escrow or in trust, the County 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;

16. the Executive Administrator may require that the County execute a separate financing agreement in form and substance acceptable to the Executive Administrator;

17. 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

18. the County'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 County when rendering this opinion;

19. the County'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 County when rendering this opinion;

20. the Obligations must include a provision prohibiting the County 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);

21. 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;

22. the Obligations must include a provision requiring the County 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 County 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 County may, however, to the extent permitted by law, commingle Gross Proceeds of its Loan with other money of the County, provided that the County 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 County 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;

23. the Obligations must include a provision prohibiting the County from taking any action that would cause the interest on the Obligations to be includable in gross income for federal income tax purposes;

24. the Obligations must provide that the County will not cause or permit the Obligations to be treated as "federally guaranteed" obligations within the meaning of § 149(b) of the Code;

25. the transcript must include a No Arbitrage Certificate or similar Federal Tax Certificate setting forth the County's reasonable expectations regarding the use, expenditure and investment of the proceeds of the Obligations;

26. the Obligations must contain a provision that the County will refrain from using the proceeds provided by this TWDB commitment or the proceeds of any prior bonds to pay debt service on another issue more than 90 days after the date of issue of the Obligations in contravention of the requirements of section 149(d) of the Code (relating to advance refundings);

27. 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;

28. the Obligations must provide that neither the County 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 County by the TWDB;

State Revolving Fund Conditions

29. the County shall submit outlay reports with sufficient documentation on costs on a quarterly or monthly basis in accordance with TWDB outlay report guidelines;
30. 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 County, 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;

31. the Obligations must include a provision stating that the County 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 County 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;

32. 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 County will adhere to the approved project schedule;

33. Obligations must contain a covenant that the County 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 31 TAC § 371.4 and related State Revolving Fund Policy Guidelines;

Drinking Water State Revolving Fund Conditions

34. the County shall pay at closing an origination fee approved by the Executive Administrator or the TWDB pursuant to 31 TAC Chapter 371;

35. 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 County 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;

36. prior to the release of funds for professional consultants including, but not limited to, the engineer, financial advisor, and bond counsel, as appropriate, the County 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;

<u>Pledge Conditions for the Loan</u>

37. 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 County 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 County shall not transfer any funds from the County'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 County 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 County 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 County and other obligations of the County which are secured in whole or in part by the pledged revenues, for which the County is budgeting the repayment of such Obligations, or the County 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:

38. prior to closing, the City must submit a corrective action plan in form and substance acceptable to the Executive Administrator addressing deficiencies related to depreciation in the fiscal year audit that ended on December 31, 2017; and

39. prior to closing, the City shall execute a Principal Forgiveness Agreement in a form and substance acceptable to the Executive Administrator; and

40. the Principal Forgiveness Agreement must include a provision stating that the City shall return any principal forgiveness funds that are determined to be surplus funds in a manner determined by the Executive Administrator.

APPROVED and ordered of record this 24th day of June, 2019.

TEXAS WATER DEVELOPMENT BOARD

____

Peter M. Lake
Chairman

DATE SIGNED: ______________________

ATTEST:

____

Jeff Walker
Executive Administrator

☑ Water
☐ Wastewater
☐ Other

Attachment 6

WATER CONSERVATION REVIEW

Entity: Borden County

Review date: April 2019

WATER CONSERVATION PLAN DATE: April 2019 ☐ **Approvable** ☑ **Adopted**

	Total GPCD	Residential GPCD	Water Loss GPCD	Water Loss Percent
Baseline	350	140	150	43
5-year Goal	270	125	40	15
10-year Goal	265	115	33	12

WATER LOSS AUDIT YEAR: 2018

Total water loss (GPCD): 50
Total water loss (percent): 16
Wholesale Water ☐
Total no. of connections: 130
Length of mains (miles): 21
Connections per mile: 6

If > 16 connections per mile and > 3,000 connections, Infrastructure Leakage Index (*ILI*): NA

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 :	21	437	NA	28	1,600	NA
If population ≤ 10K, connections/mile ≥ 32 :	NA	NA	NA	NA	NA	NA
If population > 10K :	NA	NA	NA	NA	NA	NA

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

ADDITIONAL INFORMATION:

In its water conservation plan, the county states that is has made conscious efforts to update and improve its water use accountability. The county's water conservation plan states that the county may develop rules in the future implementing a year-round watering schedule and prohibiting water waste.

Additionally, the county has developed a water conservation plan schedule of implementation, outlining years one through ten, with specific activities to help the system meet the water conservation goals set forth in the plan. Further, the county plans to prepare and post public notices regarding water conservation efforts and progress towards its goals. The county also distributes information on the benefits of native gardening and retrofitting older homes with more efficient plumbing fixtures. The county is planning on implementing new water utility billing software that will be useful in compiling more accurate data on water usage.

STAFF NOTES AND RECOMMENDATIONS:

The historic five-year average includes high volumes of water loss for years 2016 and 2017 due to the pumping rate required to conduct testing of a pilot plant for future water treatment. This volume was not metered.

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 bench marking 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.

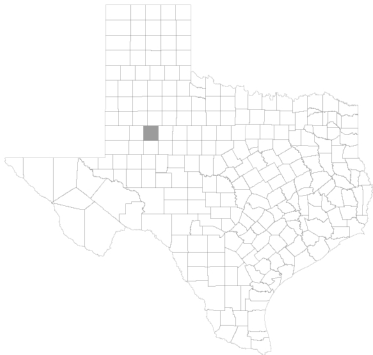
Residential GPCD is the amount of water per capita used solely for residential use and ideally includes both single and multi-family customer use.

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.



Borden County Water System
Borden County