

AGENDA ITEM MEMO

BOARD MEETING DATE: April 11, 2022

TO: Board Members

THROUGH: Jeff Walker, Executive Administrator
Ashley Harden, General Counsel
Jessica Peña, DEA, Water Supply & Infrastructure

FROM: Alyssa Azari, Manager, Program Administration

SUBJECT: Economically Distressed Areas Program Intended Use Plan

ACTION REQUESTED

Consider approving the Economically Distressed Areas Program Intended Use Plan.

BACKGROUND

The Economically Distressed Areas Program (EDAP) was created in 1989 and provides financial assistance through grants and loans for water and wastewater projects in economically distressed areas where service is not available or is inadequate to meet state standards.

Senate Bill 2452 of the 86th Legislative session resulted in changes to the EDAP program, including requiring the use of a formal prioritization process to determine funding for eligible projects. In 2019, Texas voters approved a proposition authorizing additional general obligation bonding authority for the EDAP program. The 87th Legislature also appropriated funds to support new funding for EDAP projects.

A draft EDAP Intended Use Plan (IUP) was published on the Texas Water Development Board (TWDB) website for a 30-day public comment period in December 2021, concurrent with proposed administrative rules for the program. The draft EDAP IUP outlined programmatic requirements including eligible activities, loan and grant eligibilities, available funding capacity, and prioritization criteria.

On March 14, the TWDB opened the solicitation period under the proposed rule, during which interested entities can submit abridged applications. Abridged applications will be due May 13, 2022.

Our Mission

Leading the state's efforts in ensuring a secure water future for Texas and its citizens

Board Members

Brooke T. Paup, Chairwoman | Kathleen Jackson, Board Member

Jeff Walker, Executive Administrator

Pursuant to the proposed 31 Texas Administrative Code (TAC) §363.504 the TWDB will complete a prioritization of the projects as outlined in the IUP. Eligible projects that received priority for financial assistance will be invited to submit a complete application, which will include a detailed financial, legal, engineering, and environmental review, including final eligibility review.

PUBLIC REVIEW, HEARING, AND COMMENTS

A notice of the 30-day public comment period and the associated public hearing on the draft IUP was placed on the TWDB website and sent via email to current participants of TWDB's funding programs, as well as the TWDB's general inquiry and financial assistance mailing lists. The public comment period was from December 31, 2021 to January 31, 2022. A public hearing was conducted in person on January 28, 2022 at 2:00 P.M. in Austin.

The public comments and TWDB's responses are shown in Attachment 1. Based on public comment received, the following changes have been made to the EDAP IUP:

1. A section titled "Reimbursement for Incurred Project Costs" has been added to the IUP that provides information regarding reimbursement of eligible project costs.
2. The TWDB has clarified the provision that EDAP may not be used to upgrade or replace facilities paid for with prior TWDB assistance, regardless of the funding program. While replacements or upgrades for previously funded facilities would not be eligible, projects that add additional eligible EDAP connections to previously funded projects are allowable. For example, projects to increase treatment capacity, distribution/collection lines, and hook-ups to accommodate additional connections in EDAP eligible areas would be eligible.

Minimal non-substantive changes have also been made regarding the proposed funding cycle timeline.

KEY ISSUES

After review of Abridged Applications for eligibility and scoring, the prioritized list of projects to be invited to apply for funding will be added to the IUP as the Project Priority List (PPL).

RECOMMENDATION

The Executive Administrator recommends adoption of the final EDAP IUP with the ability to make non-substantive changes if necessary.

Attachments:

1. Response to public comments on the Draft EDAP IUP
2. Recommended Final EDAP IUP

Texas Water Development Board

Response to Comments on the Draft Economically Distressed Areas Program Intended Use Plan

The following provides a summary of the public comments, the Texas Water Development Board (TWDB) responses, and changes to the draft Economically Distressed Areas Program (EDAP) Intended Use Plan (IUP).

Brownsville Public Utilities Board

Comment submitted by: David R. Abrego, Jr., Senior Coordinator, Brownsville Public Utilities Board

Comment Date: January 12, 2022

Comment:

This question is being submitted in regard to the EDAP IUP

We, the Brownsville Public Utilities Board (BPUB), Water and Wastewater Engineering Department have continued working with the colonias situation in the Brownsville, Cameron County area. These previously identified subdivisions currently have no access to the public sanitary sewer collection system that BPUB is responsible for. We have initiated work for several of these project areas and used in-kind funds to prepare the Final Engineering Report, an Environmental Assessment, and Design for the extension of the BPUB sanitary sewer collection system to serve these areas.

If we were to apply for acquisition funding and construction funding, would we be able to apply to have the in-kind funding reimbursed, given that we followed protocol for the procurement procedures for these tasks.

If there is anything that you would need for me to clarify regarding this question, please contact me at your convenience.

Thank you.

Response:

The TWDB appreciates the comments received for the EDAP IUP.

Eligible costs incurred on or after December 31, 2021, which is the date the draft Intended Use Plan was provided to the public, in compliance with all program requirements and law on the approved project activities, may be eligible for reimbursement.

Change:

A section titled “Reimbursement for Incurred Project Costs” has been added to the IUP that provides: “Eligible costs incurred on or after December 31, 2021, in compliance with all program requirements and law on the approved project activities may be eligible for reimbursement.”

Enprotec/Hibbs & Todd, Inc.

Comment submitted by: Keith Kindle, P.E., Chief Operating Officer, Enprotec/Hibbs & Todd, Inc.

Comment Date: January 20, 2022

Comment:

We have the following comments concerning the Draft EDAP IUP as listed below.

1. TWDB previously instructed that entities that received EDAP funding are NOT eligible to apply for funding again. At the funding webinar, TWDB stated that is not the case and that entities that previously received EDAP funds may apply again. However, as noted in sentence number 3 under "Prioritization and Selection of Projects," it states, "*EDAP funds may not be used to upgrade or replace infrastructure paid for with prior TWDB assistance, regardless of the funding program through which it was provided.*" This requirement appears to prohibit former EDAP entities from applying again since many past EDAP projects involved first-time water distribution, wastewater collection, water treatment, storage, and wastewater treatment. It will be challenging to make improvements that do not have some relationship with existing infrastructure funded by the EDAP or SRF programs. We would note that the EDAP is over 30 years old, and many of the previously funded projects for entities that once received EDAP funding are reaching the end of their life expectancy. These entities cannot simply raise rates to pay for the replacement of these projects since most are still severely economically disadvantaged. There is a great need and public benefit to assist economically-distressed areas with new infrastructure to provide adequate water and wastewater services. We recommend that this prohibition be stricken from the final EDAP IUP to allow some of the 160 plus EDAP entities to apply again.

2. The Draft EDAP IUP requires that for an entity to submit an abridged application, the entity's county must have already adopted and enforced the MSRs. This interpretation seems to be a stretch of what Chapter 364 intended, which states, "*Before an application for financial assistance from Economically Distressed Areas Program as specified in Chapter 355, Subchapter B of this title or Chapter 363, Subchapter E of this title may be considered by the board; the applicant shall provide documentation satisfactory in form and in substance that the municipality, if applicable, and county in which the applicant is located has adopted the necessary orders, ordinances, or other rules that meet the requirements of the Model Subdivision Rules contained in Subchapter B of this chapter.*" We have always understood that the Board cannot consider a **complete** financial application and board commitment for funding unless the applicant and the applicant's county have adopted the MSRs. We do not believe that applies to the abridged application.

The TWDB would receive a more significant number of abridged applications from applicants in counties that have not adopted MSRs to address the state-wide water and wastewater needs of economically distressed areas. The TWDB would better understand the magnitude of need if this requirement to adopt MSRs before submitting an abridged application was changed. Once an applicant knows that they are on the potential list of

funding for the EDAP, the applicant AND the applicant's county are much more likely to adopt the MSRs. There is adequate time between the Final IUP and when complete applications are due for the applicant and the applicant's county to adopt the MSRs. We would recommend that the requirement to adopt the MSRs before the submittal of the abridged application be changed to the condition to adopt MSRs before the Board considers the complete financial application and Board commitment.

Thank you for the opportunity to provide input!

Response:

The TWDB appreciates the comments received for the EDAP IUP.

1. The TWDB has clarified this provision that EDAP funds may not be used to upgrade or replace facilities paid for with prior TWDB assistance, regardless of the funding program. While replacements/upgrades for previously funded facilities would not be eligible, projects that add additional eligible EDAP connections to previously funded projects are allowable. For example, projects to increase treatment capacity, distribution/collection lines, and hook-ups to accommodate additional connections in EDAP eligible areas would be eligible. This will clarify that the program would finance projects that build upon the existing investment in facilities and recognizes that adding connections may involve increases in treatment capacity for example.

2. Given the timing requirements with regard to the sale of bonds and ensuring compliance with the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA), the TWDB believes it is prudent to require evidence of eligibility at the abridged application stage. The agency made the program rules and requirements available on December 31, 2021, and believes that there will be time for a political subdivision to adopt the Model Subdivision Rules prior to the due date for the abridged applications.

Change:

1. The TWDB has clarified that while replacements/upgrades for previously funded facilities would not be eligible, projects that add additional eligible EDAP connections to previously funded projects are allowable. Projects to increase treatment capacity, distribution/collection lines, and hook-ups to accommodate additional connections in EDAP eligible areas would be eligible. This will clarify that the program would finance projects that build upon the existing investment in facilities and recognizes that adding connections may involve the increases in treatment capacity, distribution/collection lines, and hook-ups.

2. No change

El Paso Water

Comment submitted by: John E. Balliew, P.E., President and CEO, El Paso Water

Comment Date: January 31, 2022

Comment:

With action from the Texas Legislature and effective administration by the Texas Water Development Board (TWDB), funding from the Economically Distressed Areas Program (EDAP) has helped transform the quality of life for many Texans. The program has provided financial assistance to plan, design and construct water and wastewater services to areas where services do not exist or services do not meet minimum state standards. To date, approximately 486,830 Texans in 44 counties have benefitted from improved water and wastewater services under EDAP.

El Paso Water is thankful that the Legislature voted to approve a constitutional amendment proposing \$200 million in ongoing bonding authority for EDAP, and we are grateful to the voters of Texas who overwhelmingly approved its adoption by a 2-to-1 margin. We are pleased to see the EDAP program continue to make a difference in the lives of Texans since border and rural areas continue to have *colonias*, where residents haul water or use inadequate private groundwater sources and many areas still need first-time wastewater service.

Through a partnership with TWDB and EPWater, most of the residents in the Montana Vista community in El Paso County are now connected to receive potable water service. With EDAP funding, about one-third (or nearly 800 of the approximate 2400 homes) now have wastewater service. EPWater is very interested in further collaborating to bring first time wastewater service to the remaining 1600 homes. These homes still have failing septic systems that were deemed a nuisance by the Texas Department of State Health Services (DSHS).

EPWater supports much of the Intended Use Plan as drafted, as we believe this structure will help to continue to serve communities across Texas like Montana Vista. The 70-percent grant maximum amount allows the program to serve even more communities while remaining accessible to those of limited financial resources, and the process to prioritize and select projects places priority on serving communities in need of first-time water and wastewater service as well as furthering previous TWDB investments in these critical projects. Moreover, the importance given to projects serving areas with a DSHS-declared nuisance will help further eliminate these health hazards.

We would like to recommend one addition to the prioritization rankings: We recommend additional points and prioritization be provided for proposed projects that have been awarded federal funds. This will encourage project sponsors to pursue federal grant options and potentially bring more water infrastructure funding to Texas. This approach would also leverage the state funding to go farther in terms of accomplishing EDAP objectives.

Furthermore, we request that any federal dollars awarded to the same project be credited to the loan award by TWDB rather than subtracted from the grant award. This arrangement would help to accelerate the start of construction, and it would make repayment of TWDB loans even more affordable for communities with limited means.

While significant needs remain in El Paso County and throughout Texas, we are confident TWDB and EDAP will continue to help struggling communities achieve basic services and bring dignity and security to the lives of their residents. We are happy to be a partner with the TWDB in this pursuit. We respectfully request that you take our comments and recommendations into consideration as you adopt the final intended use plan.

Response:

1. The TWDB established the prioritization criteria to focus on first-time service, projects resolving public health nuisances and/or violations related to contaminants, projects that build upon previous TWDB investment in the project, such as moving forward on a project that received planning and design funding, and projects addressing violations related to TCEQ minimum requirements for storage capacity or service pressure (non-contaminants). These are factors that focus on the nature of the situation to be addressed and also could be applied for any EDAP-eligible applicant. While federal funding assists with the feasibility of the project to the entity, it would tend to change the nature of the prioritization criteria.

2. To ensure conformance with statutory requirements for overall grant-to-loan ratios, the TWDB has proposed a calculation for financial assistance, reflecting a set maximum grant-to-loan structure (70 percent grant/30 percent loan with a Nuisance Determination, or 50 percent grant/50 percent loan without a Nuisance Determination), where all applicants including those receiving federal funds are eligible for up to the maximum grant amount consistent with statutory requirements.

Further, to maintain the statutory maximum grant percentage, the program requires the applicant to take the remaining portion as an EDAP loan. Therefore, the TWDB will not be able to implement this recommendation.

Change:

No changes.

Water Finance Exchange

Comment submitted by: Hank Habicht, Managing Co-Founder, Water Finance Exchange Inc.; Brent Fewell, Co-Founder, Water Finance Exchange Inc.

Comment Date: January 31, 2022

Comment:

The Water Finance Exchange (WFX) appreciates the opportunity to offer comments on the Texas Water Development Board's (TWDB) draft Intended Use Plan (IUP) for the Economically Distressed Areas Program. We commend TWDB on the draft IUP, which offers a thorough and thoughtful approach to providing assistance to Texas communities struggling to maintain their water and wastewater infrastructure. WFX believes the draft IUP provides appropriate eligibility, criteria and scoring methodology. As discussed below, one of the greatest challenges will be helping those Texas communities who have never sought TWDB funding develop the pre-development information necessary to pursue available but limited funding. We look forward to working with TWDB to help advance this important program. WFX also looks forward to working with and evaluating why candidate communities have not been successful in past attempts to secure much needed funding.

Who is WFX?

WFX is a 501(c)(3) nonprofit committed to working with financially distressed communities, including those that are underserved and disadvantaged, seeking to address the funding gaps of their water and wastewater infrastructure needs like so many thousands of communities across the U.S. With a network of experts and a revolving pre-development fund, WFX works hand-in-hand with communities to connect them to funding and other expertise to build scalable solutions.

WFX is creating a pipeline of community water infrastructure project opportunities that will attract funding from a range of public and private funding entities through a rigorous pre-development process. Most recently, WFX was excited to announce a new pre-development fund, seeded by Lyda Hill Philanthropies, dedicated to serving financially distressed communities within Texas.

WFX operates as a neutral intermediary, working in partnership with community leaders to evaluate and pursue financing, governance, and operating models that are in the best interest of communities. Our experience has confirmed there is no single, cookie-cutter approach or one-size-fits-all solution, but rather any sustainable solution must be necessarily tailored to each community and watershed. Toward that end, our model begins with community engagement and an assessment to identify solutions that meet the needs of the individual community. Solutions may range from supporting access to new water resources, assessing innovative approaches for treatment or operations, pursuing

partnerships or consolidation of services or assets to increase economies of scale, or helping noncompliant systems onto a path back to compliance to reduce environmental impacts or public health risks.

In Texas, hundreds of small communities face water scarcity, economic hardship, and a lack of safe drinking water and wastewater infrastructure. Many of these communities simply lack the capacity to manage these systems or seek funding necessary to fix their infrastructure. We believe Texas is well poised to be a national leader in helping these distressed communities develop sustainable water infrastructure.

In December 2021, WFX and RSAH2O co-hosted a workshop of Texas water leaders in El Paso, Texas to discuss a roadmap for successful partnerships to meet the growing water and wastewater needs of underserved Texas communities, and to identify candidate communities, including Colonias, and struggling rural communities throughout the Texas Rio Grande border and far west Texas area. This workshop served as a catalyst for further conversations and partnerships with the TWDB to focus on underserved communities. WFX was pleased to meet and collaborate with leaders of NGOs and agencies, including TWDB, the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency, Department of Agriculture, Texas Water Foundation, Environmental Defense Fund, Texas Water Trade, Communities Unlimited, Rural Community Assistance Partnership, Southwest Environmental Finance Center, and the Environmental Policy Innovation Center, to name a few.

The following recommendations emerged from the El Paso workshop.

Recommendation 1 - Collaboration and Coordination

As a significant infusion of federal infrastructure and recovery funds are allocated to the state SRF programs from the Bipartisan Infrastructure Law, there will be heightened expectations regarding the disbursement of those funds as quickly as possible to meet the needs of disadvantaged and underserved communities.

The challenges of providing appropriate funding and governance for drinking water and wastewater services to underserved communities in Texas are significant priorities for leading public and private organizations. There are many positive efforts being undertaken to address these issues, but the numerous organizations working in this field are still too siloed. There is a need to find closer linkages and build communities of interest.

More effective collaboration depends upon developing a shared nomenclature and more commonly accepted definitions of key terms like technical assistance, regionalization, shared services, affordability, sustainability, and right-sized community plans. This collaboration can take many forms, including, but not limited to, consolidated approaches to management and operations to achieve needed economies of scale and other promising models to maximize scale and control costs in the provision of operating services, shared capacity, wholesale water, and other ideas.

Collaboration is also integral to a host of governance structures and models. For example, regional management and operations, such as Florida's Governmental Utility Authority and Regional Water Cooperatives can significantly reduce the costs of services by spreading capital costs over a larger rate base. Professional water and wastewater companies that enter into long-term contracts to manage and operate municipal or private systems can also provide sustainable operations and improve overall services. These types of collaboration must all be integrated with other water management priorities, such as watershed planning focused on sustainable groundwater management and related green infrastructure initiatives.

We also know that success begets success and there is a need to create, collect, and track examples of successful models and show-case communities. This process can help standardize economic and rate analysis, pooling data and knowledge. It is essential to document these individual community success stories to highlight innovation and progress. We also believe that the Texas Legislature has an opportunity to enhance support for disadvantaged communities, to help spur economic opportunities for these communities. Innovative funding projects generate substantial economic development benefits and do not need to look like entitlement programs. The days of "free money" for infrastructure are long gone and every community, regardless of need and resources, must have a commitment to do the hard work and get the job done.

Over the last couple of years as the COVID pandemic has caused great hardship to so many households and communities, it has also brought new economic opportunities by bringing about a restructuring of where and how we as Americans work and live. As employers have adopted remote work platforms, rural communities have become the beneficiaries of this changing demographics. But these demographic shifts are also creating greater strain on these communities who are unprepared for the significant growth and need for dependable water and sanitary services.

WFX believes this ongoing social transformation will lead to a rural renaissance or sorts and create new economic opportunities for many rural communities that never existed before. But it will only benefit those communities prepared to attract and support new residents and businesses. For these communities to benefit from this new economy, they must not only have broadband, but dependable and sustainable water and sanitary systems.

One key recommendation is to create a Community of Practice for financially distressed and underserved communities. This Community of Practice would help build the knowledge base of accessible data and best practices, streamline the process of obtaining funding and create new funding models, and would also connect water infrastructure to other critical economic development pillars for small communities, including broadband, power and general quality of life.

Recommendation 2 - Broadening Access to Financing and Funding Resources

Organizations like the TWDB, the Texas Water Foundation and regional Environmental Finance Centers are working to catalog the range of available funding sources to communities. However, due to limited human resources and debt service challenges, smaller communities are unlikely to meet all their financing needs with one funding source or financial instrument.

Many of these potential financing sources were discussed at the workshop, such as the Texas Water Development Board programs, EPA, USDA, and RCAP. For example, the EPA SRF program is receiving significant enhancements for grant funding, technical assistance, and EPA administration to reach Justice 40 goals. USDA continues to offer resources and local funding to serve a significant number of small communities.

The federal, state, and regional sources of funds as well as private sector sources of grants and loans, can be blended to address community needs, if these sources can be effectively coordinated and implemented. Philanthropy resources can build bridges to support innovative approaches to fill gaps that may prevent initial community funding packages from being finalized. Philanthropy has great potential to find creative ways to mitigate risk and provide highly credible voices to raise the profile of these underserved communities' issues with policymakers and influencers.

Public and private funders are also interested in funding collaborative efforts among communities on a watershed-scale. Regional approaches should be considered as they can deliver efficiencies and cost savings while ensuring all communities' needs are covered. There are thousands of small water systems in Texas, many of whom lack financial and technical capacity, and regional models will be necessary to achieve successful scale.

However, significant challenges and barriers to access remain. For example, TCEQ approval is required for a Special Utility District to receive nonfederal funding. Certain requirements and procedures often extend the time between a successful application and actual funding. Communities in need of funding, e.g., for new groundwater wells or treatment systems, often do not have the time nor resources to wait for lengthy approval processes and prolonged release of funds to manage public health crises. At the same time, rate increases passed onto consumers create further need for additional support from low-income water assistance programs that provide financial assistance to those households unable to pay their water bills.

It is critically important to have a shared compendium of funding resources, as well as the timing and regulatory requirements associated with those resources. These resources need to be more readily available to communities that need them, in a way that can be utilized and accessible at a local level.

Recommendation 3 - Increasing Technical Support

There is a clear need for trusted intermediaries and technical assistance resources to be provided to small, rural, and disadvantaged communities. This is an ongoing challenge as government agencies, for-profit firms, and NGOs may not engender the requisite trust to effectively engage with local communities. However, these intermediaries or "funding navigators" are urgently needed to guide communities through the funding and financing process to solve water management problems.

As no one funding program alone will be able to deliver the core infrastructure and support small communities' needs, a key priority is to make accessible the best information about what partnerships have worked and what potential financial supporters and experts are available to help communities put a sustainable funding plan together.

These intermediary relationships need to be funded, and a revolving pre-development fund is a promising vehicle. A range of local and other organizations can serve as intermediaries and can deliver outputs including fund able plans and partnerships. Government sanctioned and cooperative governance structures that preserve local community authority, as well as blended funding utilizing grants and low-interest loans are potential solutions. These strategies can include public funding sources, such as grants, loans and low-income water assistance programs, supplemented by philanthropic and other private sources.

In closing, we at WFX appreciate this opportunity to comment on the draft IUP and share our perspective on the opportunities to meet the needs of many Texans. We look forward to the opportunity to continue to collaborate with TWDB toward achieving our shared vision and goals. Please do not hesitate to call upon us as needed.

Response:

The TWDB appreciates the comments received for the EDAP IUP.

Change:

No changes.

National Wildlife Federation

Comment submitted by: Danielle Goshen, Policy Specialist/Counsel, National Wildlife Federation

Comment Date: January 31, 2022

Comment:

Please accept this document as the written comments of the National Wildlife Federation regarding the **Draft EDAP IUP SFY 2022** posted on the Texas Water Development Board's website on December 31, 2021. As always, our organization appreciates the opportunity to provide public comment.

The Water Code was amended following Senate Bill 2452 (Texas 86th). In addition to providing more financing authority under EDAP, the statutory changes to EDAP will greatly improve transparency in the program – which are both very positive developments. These amendments specifically required two important changes to the Texas Water Development Board's (TWDB) administration of the Economically Distressed Areas Program (EDAP). The first big change under SB 2452 deals with prioritization, and directed the TWDB to establish a system for prioritizing projects for which financial assistance is sought from the board.¹ Instead of creating this prioritization scheme in the rules, the TWDB is seeking to develop the prioritization scheme in an Intended Use Plan (IUP) that it periodically adopts after public comment. **It is imperative that the board prioritize projects based on level of economic disadvantage in order to achieve long-term equitable distribution of funds.**

The second big change to EDAP under SB 2452 deals with the amount of grants versus loans distributed under EDAP. SB 2452 directed the TWDB to “establish repayment based on the political subdivision's ability to repay” and requires the board to consider “the ability of the board to maximize the portion of financial assistance for which repayment is required based on the political subdivision's ability to repay the assistance, as provided by board rule.”² **We believe that the board should create financial assistance categories under the IUP in order to provide clarity and ensure the greatest amount of grants are available for projects in the highest need areas.**

The following comments will be focused on the prioritization scheme and the lack of financial assistance categories proposed under the Draft EDAP IUP for SFY 2022.

EDAP Prioritization

The TWDB's proposed rules would create an IUP process for EDAP, much like the Flood Infrastructure Fund (FIF) or the State Revolving Funds (SRFs). The substantive provisions of the prioritization scheme that the 86th legislature directed the TWDB to create is found in the draft IUP.

The purpose of the EDAP is to “provide financial assistance for construction of water and wastewater infrastructure projects in economically distressed areas across the state where

services either do not exist or existing systems do not meet minimum state standards.”³ The intent of this program is fundamentally equitable – to provide essential financial assistance for critical water infrastructure to those areas most unable to pay. However, we believe the prioritization scheme proposed under the IUP does not identify projects most in need of financial assistance.

The only consideration of an entity’s economic hardship in the draft prioritization scheme is to determine a tiebreaker using AMHI. We do not believe that consideration of AMHI only as a tiebreaker will provide the most equitable results. Instead, an equitable prioritization scheme would prioritize providing financial assistance to the projects most in need in the areas most underserved and unable to pay. Indeed, **we believe that economic hardship should be one of the largest weighting factors in prioritization.** Leaving AMHI only as a tiebreaker in the prioritization list does not ensure that projects will be equitably ranked in order of highest need.

Additional factors besides AMHI could also be added to the prioritization criteria to help achieve equitable distribution of funds under EDAP. For example, a vulnerability metric such as the CDC’s Social Vulnerability Index (SVI) could be used to help prioritize investments that are already vulnerable to other risks for a variety of factors. The EPA’s EJSCREEN is another tool that could be used to help prioritize investments in the most vulnerable communities.

EDAP Financial Assistance

As noted above, the 86th Legislature directed the TWDB to “establish repayment based on the political subdivision’s ability to repay” and required the board to consider “the ability of the board to maximize the portion of financial assistance for which repayment is required based on the political subdivision’s ability to repay the assistance, as provided by board rule.” It is important to note that while SB 2452 required the board to consider maximizing financial assistance for which repayment is required, this does not preclude the board from making EDAP as accessible as possible to the most underserved and under-resourced communities. Neither under the draft rules nor the IUP did the TWDB create a scheme to determine the amount of grants versus loans available for eligible applicants.

We believe a second component to just distribution of EDAP funds, along with prioritization of the most in need projects for the areas most unable to pay, is equitable access to EDAP funds for under-served and under-resourced communities. **Providing the maximum amount of grants for communities most unable to pay for essential infrastructure projects will increase equitable access to EDAP funds.**

Many communities may not find EDAP accessible if only a small amount of grants are available – as they may not have the ability to repay loans to make up the difference. We strongly urge the TWDB to provide the most economically disadvantaged communities with the greatest amount of grants statutorily available (70% for projects with a public health nuisance and 50% for all others). Because there is a large range of communities

eligible to access EDAP funds, with varying levels of ability to repay, **we believe that the board should establish a “financial assistance categories and eligibilities” scheme, much like the one provided under FIF.** Such a scheme would provide transparency and consistency, by showing eligible entities how much grants versus loans they would be eligible for, while aiming to provide the maximum amount of grants for those most unable to access infrastructure funds.

Our organization is dedicated to an effective and equitable distribution of EDAP resources. We believe that the TWDB leadership and staff are also dedicated to the same. However, we strongly believe that those goals will be more likely to be achieved by addressing the prioritization and financial assistance issues that we have raised.

Thank you again for the opportunity to provide these comments.

Response:

The TWDB appreciates the comments received for the EDAP IUP.

All entities seeking assistance through the EDAP program must meet the definition of “economically distressed”: where water supply or wastewater services are inadequate to meet minimal needs of residential users, financial assistance resources are inadequate to provide water supply or wastewater services, and finally an established residential subdivision was located on June 1, 2005. Financial resources being inadequate to provide water supply or wastewater services that will satisfy those needs is considered to be met if the weighted average Annual Median Household Income (AMHI) for Census geographic areas to be served by the proposed project is not greater than 75 percent of the statewide AMHI. Within the eligible entities, the TWDB focused prioritization on first-time service, projects resolving public health nuisances and/or violations related to contaminants, projects that build upon previous TWDB investment in the project, such as moving forward on a project that received planning and design funding, and projects addressing violations related to TCEQ minimum requirements for storage capacity or service pressure (non-contaminants). This will direct the limited EDAP resources to the areas of greatest need to remedy water and wastewater services considered inadequate to meet minimal needs of residential users.

To ensure conformance with statutory requirements for overall grant-to-loan ratios, the TWDB has proposed a streamlined calculation for financial assistance, reflecting a set maximum grant-to-loan structure (70 percent grant/30 percent loan with a Nuisance Determination, or 50 percent grant/50 percent loan without a Nuisance Determination), where all applicants are eligible for up to the maximum grant amount consistent with statutory requirements.

Change:

No change.



STATE OF TEXAS

Intended Use Plan

Economically Distressed Areas Program

www.twdb.texas.gov/financial/programs/edap

DATED: 3/14/2022

Texas Water Development Board
PO Box 13231
Austin, TX 78711

Program Overview

The Economically Distressed Areas Program (EDAP) provides financial assistance to political subdivisions and non-profit water supply corporations for projects intended to serve economically distressed areas where water supply or wastewater services are inadequate to meet minimal needs of residential users, financial resources are inadequate to provide water supply or wastewater services that will satisfy those needs; and an established residential subdivision was located on June 1, 2005. The purpose of this Intended Use Plan is to outline the intended method for allocating EDAP funds.

Eligible Applicants

Eligible EDAP applicants include cities, counties, water districts, nonprofit water supply corporations, and all other political subdivisions (Texas Water Code Section 16.341(3)). **The city or county where the project is located must adopt and enforce [Model Subdivision Rules](#) for the regulation of subdivisions in the project area before submitting an EDAP abridged application.** Model rules must be consistent with the rules adopted by the Texas Water Development Board (TWDB) ([31 Texas Administrative Code Chapter 364](#)).

To qualify as economically distressed, an area must meet three criteria:

1. **Water supply or wastewater services are inadequate to meet minimal needs of residential users.**

For water supply projects, program rules allow for this standard to be met if water supply service:

- A. does not exist or is not provided;
- B. is provided by a community water system that does not meet drinking water standards established by the Texas Commission on Environmental Quality (TCEQ);
- C. is provided by individual wells that, after treatment, do not meet drinking water standards established by the TCEQ; or
- D. does not meet applicable drinking water standards of any other governmental unit with jurisdiction over the area.

For wastewater projects, this standard is met if wastewater service:

- A. does not exist or is not provided;
- B. is provided by an organized wastewater collection and treatment facility that does not comply with the standards and requirements established by the TCEQ;
- C. is provided by on-site wastewater facilities that do not comply with the standards and requirements established by the TCEQ; or
- D. does not meet applicable wastewater standards of any other governmental unit with jurisdiction over such area.

2. **Financial resources are inadequate to provide water supply or wastewater services that will satisfy those needs.** This standard is met if the weighted average Annual Median Household Income (AMHI) for Census geographic areas to be served by the proposed project is not greater than 75 percent of the statewide AMHI.

Projects providing first-time residential service connections must meet the threshold above, but only households that meet the income eligibility requirements set by the US Department of Housing and Urban Development are eligible to have their connection costs paid with EDAP funds. This threshold is set at 80 percent of the median family income and is compared against the county median for each family size, rather than the statewide household median. See Appendix B for details on the Census and survey methods used to establish income eligibility.

3. **An established residential subdivision was located on June 1, 2005.** This standard may be met if:
 - A. either a plat of the area is recorded in the county plat or deed records; or a pattern of subdivision, without a recorded plat, is evidenced by the existence of multiple residential lots with roads, streets, utility easements, or other such incidents of common usage or origin; and
 - B. at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005.

Eligible Projects

An **eligible project** is one that addresses one or more of the inadequacies described in the first criteria above and is in an area that satisfies criteria 2 and 3. Example projects include the planning, land acquisition, design, and construction of the following:

- First-time water and wastewater service, including:
 - residential connections to a new public water supply system constructed with financial assistance;
 - individual, on-site, or cluster treatment systems such as septic tanks
 - yard line service connections;
 - indoor plumbing facilities and fixtures;
 - residential connections to a sanitary sewer system constructed with financial assistance; and
 - necessary connection and permit fees.
- Water supply and/or treatment system improvements, including:
 - treatment plant improvements;
 - water transmission and distribution lines;
 - wells;
 - pump stations;
 - water system asset management planning; and
 - regionalization projects.
- Wastewater collection system and/or treatment works improvements, including:
 - treatment plant improvements;
 - wastewater collection and transmission lines;
 - lift stations;
 - septic tank decommissioning;
 - wastewater system asset management planning; and
 - regionalization projects.

This list is not comprehensive, and applicants are encouraged to discuss eligibility of prospective projects with their [Regional Project Development Team](#).

EDAP funds may not be used to upgrade or replace facilities paid for with prior TWDB assistance, regardless of the funding program. However, projects adding additional eligible EDAP connections to previously funded projects are allowed. For example, projects to increase treatment capacity, distribution/collection lines, and hook-ups to accommodate additional connections in EDAP eligible areas would be eligible.

Reimbursement for Incurred Project Costs

Eligible costs incurred on or after December 31, 2021, in compliance with all program requirements and law on the approved project activities may be eligible for reimbursement.

Project Solicitation

Application Process

Proposed EDAP projects will be prioritized based on information provided in the EDAP Abridged Application (Appendix A), which only requests the preliminary information necessary to complete this step. Projects that rank within the available funding capacity will be invited to submit a full application that confirms the information previously submitted and requests additional details needed for the project to receive a funding commitment.

Available Financing and Grant Calculation Methodology

This IUP cycle may fund projects using up to an estimated \$100 million of bonds from one or more bond transactions.

The maximum amount of grant available will be 70 percent per project. However, the grant percentage for a project cannot exceed 50 percent unless a public health nuisance exists, as determined by either the TWDB or the Texas Department of State Health Services (DSHS). Public health nuisance determinations made by local sanitarians or public health officials *may* be submitted with an Abridged Application for potential consideration of prioritization and scoring; however **only Nuisance Determinations issued by TWDB or DSHS are accepted as documentation for grant allocation purposes.**

If you believe a public health nuisance may exist but a Nuisance Determination has not been issued by TWDB or DSHS, please contact the TWDB at Financial_Assistance@twdb.texas.gov. You may also submit a request for review and possible issuance of a Nuisance Determination with your Abridged Application. See Appendix C for details on public health nuisance determinations.

For all eligible projects, the portion not paid for by a grant must be provided as an EDAP loan.

Article III of the Texas Constitution was amended in 2019 to provide that “the Texas Water Development Board may issue general obligation bonds, at its determination and on a continuing basis, for the economically distressed areas program account of the Texas Water Development Fund II in amounts such that the aggregate principal amount of the bonds issued by the board under this section that are outstanding at any time does not exceed \$200 million.” The TWDB is required by statute (Texas Water Code Section 17.933) to maintain a certain grant-to-loan ratio. The total amount of grants may not exceed at any time 70 percent of EDAP’s total amount of financial assistance provided from this new authorization. The TWDB reserves the right to adjust eligible grant percentages as necessary to maintain the overall grant-to-loan ratio required by statute.

TWDB may limit the amount of EDAP funds, including the amount of grant funds, provided to an entity or project.

Prioritization and Selection of Projects

1. **First-time service: 15 points.** Applies to projects providing first-time service for residential customers.
2. **Project resolves public health nuisances and/or violations related to contaminants: 10 points.** Applies to projects that:
 - will resolve the circumstances leading to a public health nuisance determination; or
 - will resolve a TCEQ or EPA violation related to contaminants that were not caused or allowed by the applicant (applicant must certify).
3. **Previous TWDB investment in the project: 8 points.** Applies to projects that received TWDB financial assistance for earlier phases of the same project for which funds are being requested (for example a project that received planning and design funds).
4. **Projects addressing violations related to TCEQ minimum requirements for storage capacity or service pressure (non-contaminants): 3 points.**
5. **Tiebreaker: AMHI of Proposed Project Service Area.** Ties will be decided in favor of the project proposed by the project service area with the lowest service area AMHI.

Timeline

Abridged Application Due Date

- May 13, 2022
TWDB staff will review Abridged Applications for eligibility and perform initial grant calculations.

Detailed Applications Invited for Projects that Rank Within Available Capacity

- Summer 2022
Board will adopt final EDAP IUP and approve the project priority list (to be included as Appendix D), with preliminary grant calculation results.
*Applicants will be **required to attend a pre-application meeting** with its assigned TWDB Regional Project Development Team.*

Applications Due

- Summer 2022
Applications will undergo a full technical review by TWDB staff before funding recommendations are considered.
Note: If an applicant submits an abridged application for prioritization purposes but fails to submit a complete full application in a timely manner, the project will lose its priority ranking and the board may commit to other projects consistent with the prioritization.

Project Funding Commitments

- Begin Late 2022
Entities in receipt of financial assistance commitments will have up to six months to close on their financing unless an exception for cause is specifically recommended by the Executive Administrator and approved by the Board.

Appendix A: EDAP Abridged Application

By submitting this Abridged Application, you understand and confirm that the information provided is true and correct to the best of your knowledge and further understand that the failure to submit a complete Abridged Application by the stated deadlines, or to respond in a timely manner to additional requests for information, may result in the withdrawal of the Abridged Application without review.

GENERAL INFORMATION

Entity Name	
Entity Type (City, County, District, etc.)	
Contact Who should TWDB contact with questions during the review of this submission?	Name
	Title
	Phone
	Email

PROJECT INFORMATION

Project Name			
EDAP Request	\$		
Applicant has adopted and is enforcing Model Subdivision Rules (per Texas Water Code Section 16.343 and 31 TAC Chapter 364)	<input type="checkbox"/> Yes ; Year adopted _____		
Project Phase(s) for which Assistance is Requested			
<input type="checkbox"/> <u>Planning</u>	<input type="checkbox"/> <u>Acquisition</u>	<input type="checkbox"/> <u>Design</u>	<input type="checkbox"/> <u>Construction</u>

DESCRIPTION OF PROPOSED PROJECT

Please be sure this description includes all major project components and clearly states what the project seeks to accomplish. A high level of detail is not necessary at this stage—such information is collected later in the application process.

PRIORITIZATION CRITERIA

<p>First-Time Service</p> <p>Project will provide first-time service for residential users.</p>	<p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>
<p>Public Health Nuisance Please see attachments checklist for documentation requirements</p> <p>A public health nuisance exists in the project area, including those determined by a local sanitarian or public health official but not surveyed by DSHS, and the proposed project will resolve the issue leading to the determination.</p> <p><i>NOTE: Local sanitarian and public health official determinations are accepted for prioritization; however, only Nuisance Determinations issued by TWDB or DSHS will be accepted for grant allocation purposes.</i></p> <p><i>A request for review and possible issuance of a Nuisance Determination by TWDB or DSHS may be submitted with this Abridged Application.</i></p>	<p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p><u>If would like to request review for possible issuance of a Nuisance Determination by TWDB or DSHS, please state which of the drinking water or wastewater public health nuisance condition(s) listed in Appendix C applies (ex: <i>Drinking Water #1: Absence of potable water for human consumption</i>):</u></p>
<p>Contaminant Violations Please see attachments checklist for documentation requirements</p> <p>The area to be served by this project is in violation of requirements set by TCEQ or EPA regarding contaminant levels or other potential threats to public health, and the proposed project will resolve the issue causing the violation.</p>	<p style="text-align: center;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>

<p>Previous TWDB Investment</p> <p>Were any previous portions of the project completed with TWDB financial assistance?</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
<p>Non-Contaminant Violations</p> <p>Please see attachments checklist for documentation requirements</p> <p>Project will resolve TCEQ or EPA violations not related to contaminants or other potential threats to public health (ex: storage capacity or service pressure).</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

If you responded "Yes" above, please provide the TWDB project number(s) and/or name(s) associated with previously funded work:

INFORMATION FOR INCOME ELIGIBILITY CALCULATION

<p>AMHI for proposed project service area</p> <p>Census geographical area(s) used for calculation of AMHI must be attached</p> <p>Note: If weighted average method was used, must attach calculation</p>	<p>\$ _____</p>
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ESTIMATED COSTS

TWDB Funds	\$
Local Contribution	\$
Other	\$
Total Estimated Project Costs Including issuance and escrow costs	\$

ATTACHMENTS CHECKLIST

- List of Census Geographic areas (Cities, Counties, Census Tracts, and/or Block Groups) served by the Proposed Project and any weighted average calculations
- Documentation that an established residential subdivision was located in the Project Area on or before June 1, 2005
- Public Health Nuisance Determination (if applicable)
 - Local sanitarian and public health official determinations may be submitted for project prioritization
 - TWDB or DSHS Nuisance Determination required for grant eligibility above 50 percent
 - To request a review for possible issuance of a Nuisance Determination by TWDB or DSHS,** please submit the following:
 - a clear statement of the problem (e.g., potable water supply, malfunctioning sewage disposal, or lack of sewage disposal or treatment)
 - current**, detailed, map(s) delineating the project area and including sufficient information to clearly identify parcels and addresses, appropriate property lines, water or wastewater lines, water well (private and public), water storage tanks, septic tanks, disposal areas, and other treatment or disposal facilities
 - any additional supporting documentation, including photographs, records of violations, enforcement orders, or water/wastewater quality reports
- Contaminant Violations Supporting Documentation (if applicable)
 - Documentation showing current violation of requirements and resulting enforcement action by TWDB, EPA, or the state, including final orders, judgements, or consent decrees
 - Applicant must also include a signed statement, self-certifying that the entity did not cause or allow the violations
- Non-Contaminant Violations Supporting Documentation (if applicable)
 - Documentation showing current violation of requirements and resulting enforcement action by TCEQ, EPA, or the state, including final orders, judgements, or consent decrees
 - Applicant must also include a signed statement, self-certifying that the entity did not cause or allow the violations
- Previous TWDB Investment Supporting Documentation (if applicable)

SUBMITTAL

Instructions	Please submit your Abridged Application via email: Financial_Assistance@twdb.texas.gov
TWDB Contact Information	To schedule your pre-application meeting, please contact the Regional Project Development Team for your region: https://www.twdb.texas.gov/contact/office/wsi.asp#rwpd
	For general program inquiries, please email: Financial_Assistance@twdb.texas.gov .

Appendix B: Guidelines for Documenting Income Eligibility

Establishing EDAP Eligibility

Projects are eligible for EDAP assistance only if the weighted average AMHI for Census geographic areas to be served by the proposed project is not greater than 75 percent of the statewide AMHI. Applicants are asked to document their eligibility by providing Census data appropriate to the project area. For projects with borders that do not coincide neatly with county or city boundaries, this may mean using several Census Tracts or Block Groups to document the area.

Census Data Resources

The following resources may be helpful in identifying Census geography:

- [Directory of Census Tract maps for Texas Counties](#). The folder for each county includes several maps. The first map shows the entire county with a numbered grid, and each subsequent numbered map shows one of the grid squares.
- [Texas Block Group Map](#). Find Census block groups using an ArcGIS map that labels each block group with a numeric code: a 4-digit prefix followed by the 4-digit Census Tract number and the 3-digit Block Group.
- [Census Bureau Interactive Map](#). Use the Geography filter to identify Census Tracts within a specific county, or Block Groups within a specific Census Tract.

Weighted Average Methodology

After identifying the benefiting geographic areas, find the AMHI and Households for each area using the [American Community Survey \(ACS\) 5-Year Estimates available here on the TWDB website](#), or directly sourced from the [U.S. Census Bureau's Explore Census Data website](#). Households are calculated as Population divided by Household size (e.g., 5,000 population divided by 3.34 persons per household = 1,497 households).

The weighted average AMHI is calculated by the following method:

$$\text{Weighted Average} = \frac{((AMHI\ 1 \times Households\ 1) + (AMHI\ 2 \times Households\ 2) + (AMHI\ 3 \times Households\ 3) \dots)}{Total\ Households}$$

Socioeconomic Surveys

TWDB offers socioeconomic surveys as an alternative in areas where Census data is not believed to give an accurate depiction of income characteristics. Please review [WRD 285 – Socioeconomic Survey Guidelines](#) for details on the requirements associated with these surveys. Survey results must be submitted before the abridged application deadline.

Household Eligibility for First-Time Service Projects

First-time service projects must meet the overall income eligibility threshold described above, but households in the benefit area must meet an additional threshold based on U.S. Department of Housing and Urban Development (HUD) income limits to be eligible for the cost of their connection to be paid with EDAP funds. This threshold is set at 80 percent of the median family income for a given area and is compared against the county median for each family size, rather than the statewide household median.

A list of the most current HUD income limits is available here: <http://www.huduser.org/portal/datasets/il.html>

Eligibility for first-time service households utilizing funding for connections is documented on a household-by-household basis using the survey process described in [TWDB 0401 – Survey Guidelines for EDAP Connection Assistance](#).

Please note, a written request must be submitted to the TWDB before a survey is performed. The TWDB will notify the entity in writing whether to proceed with the survey. Surveys conducted prior to TWDB approval may be considered on a case-by-case basis.

Appendix C: Nuisance Determinations

Nuisance Determinations for Grant Eligibility

The eligible grant percentage for an applicant cannot exceed 50 percent unless a public health nuisance exists, as determined by either the TWDB or DSHS. Public health nuisance determinations made by local sanitarians or public health officials *may* be submitted with an Abridged Application for potential consideration in prioritization and scoring; however **only Nuisance Determinations issued by TWDB or DSHS are accepted as documentation for grant allocation purposes.**

If you believe a public health nuisance may exist but a Nuisance Determination has not been issued by the TWDB or DSHS, please contact the TWDB at Financial_Assistance@twdb.texas.gov.

Nuisance Determinations for grant allocation purposes must be issued by the TWDB or DSHS prior to project funding commitment.

Public Health Nuisance

Public Health nuisances are defined in [Section 341.011 of the Health and Safety Code](#). The following provisions are applicable to EDAP:

1. a condition or place that is a breeding place for flies, that is in a populous area, and that results from the presence of human wastewater or excreta;
2. sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons;
3. a place or condition harboring rats in a populous area; rat infestations resulting from improper disposal of kitchen or human waste as a direct result from the lack of a proper septic system or a failing septic system;
4. the maintenance of an open surface privy or an overflowing septic tank so that the contents may be accessible to flies; and
5. an object, place, or condition that is a possible and probable medium of disease transmission to or between humans.

The above provisions may apply to drinking water and/or wastewater nuisances. Based on a review of submitted documentation and (in certain cases) an on-site survey, the TWDB or DSHS may issue a public health Nuisance Determination for the following conditions:

Drinking Water

1. Absence of potable water for human consumption (drinking, cooking, and washing).
2. A public water system that provides drinking water that does not meet federal and state drinking water standards of [30 TAC Chapter 290](#).
3. A public water system well or a private water well which has become unusable, or has the potential to become unusable, because of conditions including private water well(s) located within 100 feet of on-site sewage facility (OSSF) disposal areas or located within 50 feet of a septic tank. If a private well is pressure cemented or grouted down to 100 feet, or to the water table if the water table is less than 100 feet, then such private well(s) located within 100 feet of an OSSF disposal area or within 50 feet of a septic tank will not be considered to be a nuisance ([30 TAC Chapter 285](#)).
4. One or more public water supply well(s) located within 150 feet of an on-site sewage facility disposal area or located within 50 feet of a septic tank (unless other adequate public water supply wells are in use and capable of meeting minimum capacity requirements and maximum daily demand).
5. Detection of fecal indicator organisms in a well.

6. Deterioration of a public water system due to factors other than operator error or neglect, such that the structural integrity of major components is compromised resulting in an inability to consistently provide an adequate supply of water for human consumption. See [30 TAC Chapter 290, Subchapter D, Rules and Regulations Regarding Public Water Supply](#).*
7. Any other condition relating to inadequate water supply that results in a quantifiable and documented adverse effect on human health.
8. The presence of an imminent health hazard.

**Nuisance determinations under the provisions of paragraph 6 will be referred to the Texas Commission on Environmental Quality (TCEQ) Colonia's Coordinator.*

Wastewater

1. Malfunctioning or failing individual sewage disposal systems that cannot be remedied under [Chapter 285 of the Health & Safety Code](#) due to lot sizes smaller than ½ acre, as evidenced by surfacing effluent.
2. OSSFs not meeting the requirements outlined in [Chapter 285 of the Health & Safety Code](#):
 - a. Cesspools;
 - b. Pit privies or outhouses;
 - c. Improperly sized systems;
 - d. Drain field and/or septic waste pipes leading to an open drainage ditch, open storm sewer, or drained directly onto the ground; or
 - e. Improper diversion of graywater from the OSSF, resulting in the presence of organic matter on the ground or ponding water.
3. Nuisance conditions propagating rodent harborage, fly breeding, and other unsanitary conditions as a result of unsanitary sewage disposal systems.
4. Deterioration – due to factors other than operator error or neglect – of a public waste treatment resulting in an inability to consistently furnish, operate and maintain collection, treatment and disposal facilities to collect, treat, and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. See [30 Texas Administrative Code Chapter 217 with regard to Domestic Wastewater Treatment Systems](#).
5. Any other effluent violation or unauthorized discharge which results in a quantifiable and documented adverse effect on human health.
6. The presence of an imminent health hazard.

Note: A temporary condition caused by hurricane, flood, tornado, or other act of nature may not be a nuisance for EDAP purposes.

Issuance of a Nuisance Determination

If the Applicant believes a public health nuisance may exist based on the above definitions and categories, but a Nuisance Determination has not been issued by the TWDB or DSHS, the Applicant should first contact the TWDB at Financial_Assistance@twdb.texas.gov.

1. The TWDB will request further information from the Applicant, including:
 - a. a clear statement of the problem (e.g., potable water supply, malfunctioning sewage disposal, or lack of sewage disposal or treatment)
 - b. project scope and executive summary of the project;
 - c. current, detailed, map(s) delineating the project area and including sufficient information to clearly identify parcels and addresses, appropriate property lines, water or wastewater lines, water well (private and public), water storage tanks, septic tanks, disposal areas, and other treatment or disposal facilities

- d. any additional supporting documentation, including photographs, enforcement orders, and water/wastewater quality reports
2. Dependent upon the scope of the potential public health nuisance, the TWDB may either:
 - a. provide a written determination of the existence or non-existence of any public health nuisance in the form of a Nuisance Determination based on submitted information,
 - b. request the DSHS conduct a survey to confirm a public health nuisance exists, or
 - c. refer all further review to the DSHS.

If the TWDB refers any portion of a public health nuisance determination review to DSHS,

1. DSHS will review all documents provided by TWDB and Applicant, complete any additional research, to include consultation with state and local agencies in order to supplement the information as appropriate prior to commencing any field survey
2. DSHS will conduct site visits to the area(s) under review and document observations in writing and by photograph when appropriate.
3. DSHS will provide a written determination of the existence or non-existence of any public health nuisance(s) to the TWDB.

Public health nuisances which, in the opinion of TWDB or DSHS can and should be correctable outside the project scope as proposed by the applicant, will be identified during review, and included in any written determination issued.

Appendix D: Project Priority List

Project priority list to be inserted here.