

Texas Water Development Board

PROJECT FUNDING REQUEST

BOARD DATE: June 6, 2023

Team Manager: Mireya Loewe

ACTION REQUESTED

Consider making a determination that a nuisance dangerous to the public health and safety exists in the area to be served by the Economically Distressed Areas Program project proposed by Maverick County and approving by resolution a request from Maverick County for \$24,000,000 in financial assistance consisting of \$7,200,000 in financing and \$16,800,000 in grant from the Economically Distressed Areas Program for planning, acquisition, design, and construction of a water and wastewater system project.

STAFF RECOMMENDATION

Approve No Action

BACKGROUND

Maverick County (County) is located along the U.S.-Mexico border. Its county seat is Eagle Pass, which is located approximately 143 miles southeast of San Antonio. The County's population is approximately 64,000. The County owns and operates the Maverick County Airport Waterworks System, which serves approximately 3,840 people through 429 accounts. It also owns and operates the Maverick County Radar Base Wastewater Treatment Plant and sewer system, which serves approximately 30 accounts. This includes residences and detention facilities, with a total population of approximately 730.

The unincorporated community of Quemado is a census-designated place, about 17 miles northwest of Eagle Pass along U.S. Highway 277. It has a population of approximately 300.

PROJECT NEED AND DESCRIPTION

Residents in the central, more densely populated part of the Quemado community receive water service from the County's water system, but do not have centralized wastewater service. To treat their wastewater, residents utilize septic tanks, which are old, dilapidated, and leak. The residents that live just north of the central Quemado area do not have potable water service and depend on water wells. Their old, leaky septic tanks compromise the quality of the groundwater. In addition, apparent water losses in the existing water system are above the acceptable thresholds. In another part of the county, the residents of the 15 homesteads located along Thompson Road, north of the Elm Creek area, depend on surface water from Elm Creek to fill their water tanks. The Texas Commission on Environmental Quality has recommended avoiding domestic use of Elm Creek water due to contamination from an Eagle Pass Coal Mine located approximately 0.7 miles north of the homesteads along County Road 305.

The project includes four components: 1) provide first-time wastewater service to the central area of the Quemado community by constructing approximately 8.5 miles of 18-inch wastewater main from the current Maverick County Radar Base Wastewater

COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE DECEMBER 31, 2023
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Treatment Plant to the Quemado area, plus 8-inch wastewater lines throughout the community; 2) provide first-time water service to residences just north of the existing Quemado water service area by extending approximately 9,000 linear feet of 12-inch water main from the intersection of U.S. Highway 277 and Edwards Rd., heading north, east, and west; 3) provide first-time water service to the residents along Thompson Rd. north of the Elm Creek area by constructing approximately 4 miles of 12-inch water main along Thompson Road, from its intersection at Deer Run Blvd., where it will connect to the City of Eagle Pass' water system, north bound to the end of Thompson Road; and 4) replace 12 non-functioning meters in the Quemado area.

PROJECT SCHEDULE

Task	Schedule Date
Closing	December 7, 2023
Engineering Feasibility Report Completion (End of Planning Phase)	March 5, 2026
Design Phase Completion	April 15, 2027
Start of Construction	January 15, 2028
Construction Completion	May 10, 2029

KEY ISSUES

The Executive Administrator recommends that under Texas Water Code § 17.933(b), the TWDB determine that a condition of nuisance exists in the proposed project area. This qualifies the applicant for a grant exceeding 50 percent of the project costs. Consistent with the Intended Use Plan for the current EDAP funding cycle, the Executive Administrator recommends setting the grant amount at 70 percent of eligible costs for projects that have received a nuisance determination.

LEGAL/SPECIAL CONDITIONS

- Adoption of water conservation plan
- Fiscal year 2022 audit
- Executed grant agreement
- Return of surplus grant funds
- Financial, managerial, and technical assessment
- Executed agreement with City of Eagle Pass

Attachments

1. Financial Review
2. Project Budget
3. Resolution (23-)
4. Water Conservation Review
5. Nuisance Determination
6. Location Map

Financial Review Maverick County

Risk Score: 2A

Audit Reviewed: FY 2021

Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	County: 0.65%	State: 1.49%
Top 10 Customers % of Total Revenue	45%	10-15%
Median Household Income as % of State	64%	100%
Days of Cash on Hand (3-year Average)	309 days	30-149 days
Net Fixed Assets/ Annual Depreciation	72 years	12-24 years
Debt Service Coverage Ratio	1.01x	1.0x
Direct debt to Total Assessed Valuation	1.22	2.00-4.99x
Unemployment Rate (March, 2023)	County: 9.7%	State: 4.20%
Working Capital Ratio	5.9	> 1.0

Key Risk Score Strengths

- A high working capital ratio provides the County with ample resources to cover short-term liabilities and shows a strong liquidity position.
- The County's days of cash on hand exceed the benchmark, indicating it has the liquidity needed to meet any unexpected increases in expenses.
- The County has a net direct debt to total assessed valuation below the benchmark and has proposed repayment with tax revenues.

Key Risk Score Concerns

- The County has pledged ad valorem taxes and subordinate lien water and wastewater revenues as security for the proposed debt with the tax revenue as the primary source of repayment. The County is projected to need an interest and sinking tax rate increase by approximately two cents by 2024 and a maximum of nine cents by fiscal year 2030.
- The County has top ten customers as a percentage of water revenues of 45 percent with the number one customer on the water system being Geo Group Inc. at 37 percent. Geo Group Inc. owns and manages the Eagle Pass Detention Center (formerly the Maverick County Detention Center). The County has approximately 400 water clients, with a concentration of the clients being farmers.

PLEDGE

Legal Pledge Name	Ad Valorem Tax and Subordinate Lien Revenues
Type of Pledge	<input type="checkbox"/> Tax <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Tax & Revenue <input type="checkbox"/> Contract <input type="checkbox"/> Other
Revenue Pledge Level	<input type="checkbox"/> First <input checked="" type="checkbox"/> Second <input type="checkbox"/> Third <input type="checkbox"/> N/A

RATES AND CHARGES

Average Residential Use	Gallons/Month	Current Rates	Projected Rates (Year 2023)	Current Household Cost Factor	Projected Household Cost Factor
Water	2,184,333*	\$40.00	\$40.00	1.85	1.85
Wastewater	Not Measured	\$21.21	\$21.21		

*The water gallons per month is elevated due to high usage from farmers within the county.

TAXES

	2023 Tax Year Rate	Max Projected Tax Rate (Year 2030)	Maximum Allowable Rate	3-Year Avg Current Tax Collections	Assessed Valuation
Maintenance & Operation	\$0.4300	\$0.4300	\$0.80	98%	\$3,280,995,978
Interest & Sinking	\$0.1100	\$0.2037			
Total Tax Rate	\$0.5400	\$0.6337			

Cost Savings

Based on a 20-year maturity schedule and current interest rates, the County could save approximately \$498,755 over the life of the financing. The County is also saving \$16,800,000 in grant funding.

Project Data Summary

Responsible Authority	Maverick County
Program	EDAP
Commitment Number	G1001648, L1001647
Project Number	10458
List Year	2022
Type of Pledge	Combo Tax and Revenue
Pledge Level (if applicable)	Second Lien
Legal Description	\$16,800,000 Grant Agreement, \$7,200,000 Maverick County, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023
Tax-exempt or Taxable	Tax-Exempt
Refinance	No
Outlay Requirement	Yes
Disbursement Method	Escrow
Outlay Type	Outlay = Escrow Release
Qualifies as Disadvantaged	Yes
Financial Managerial & Technical Complete	No
Phases Funded	Planning, Acquisition, Design, and Construction
Pre-Design	Yes
Project Consistent with State Water Plan	Yes
Water Conservation Plan	Approvable
Overall Risk Score	2A

PROJECT TEAM

Team Manager	Financial Analyst	Engineering Reviewer	Environmental Reviewer	Attorney
Mireya Loewe	Arnoldo Rubio	Sam Kiger	Lauren Dill	Michael Perez

ISSUE BEING EVALUATED
FOR ILLUSTRATION PURPOSES ONLY
Maverick County

\$7,200,000 Maverick County, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023

Dated Date: 12/7/2023	Source: EDAP
Delivery Date: 12/7/2023	Rate: 3.54%
First Interest: 3/1/2024	IUP Year: 2022
First Principal: 3/1/2024	Case: Tax and Revenue
Last Principal: 3/1/2044	Admin.Fee: \$0
Fiscal Year End: 09/30	Admin. Fee Payment Date: N/A
Required Coverage: 1.0	Total Assessed Valuation: \$3,280,995,978

FISCAL YEAR	PROPOSED TAX RATE	TAX REVENUES WITH COLL. @ 98%	PROJECTED NET SYSTEM REVENUES	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	\$7,200,000 ISSUE				TOTAL DEBT SERVICE	COVERAGE
						PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2024	\$0.1399	\$4,486,522	\$19,659	\$4,506,181	\$4,029,413	\$260,000	2.64%	\$165,194	\$425,194	\$4,454,607	1.01
2025	0.1234	3,957,462	19,659	3,977,121	3,410,401	265,000	2.55%	219,702	484,702	3,895,102	1.02
2026	0.1233	3,954,575	19,659	3,974,234	3,407,630	270,000	2.45%	213,016	483,016	3,890,645	1.02
2027	0.1015	3,256,798	19,659	3,276,457	2,710,159	280,000	2.41%	206,334	486,334	3,196,493	1.03
2028	0.1015	3,256,459	19,659	3,276,118	2,710,508	285,000	2.41%	199,526	484,526	3,195,034	1.03
2029	0.1017	3,262,576	19,659	3,282,235	2,717,792	290,000	2.39%	192,626	482,626	3,200,418	1.03
2030	0.2056	6,594,912	19,659	6,614,571	6,051,780	300,000	2.39%	185,576	485,576	6,537,356	1.01
2031	0.0900	2,885,060	19,659	2,904,719	2,339,218	305,000	2.40%	178,331	483,331	2,822,549	1.03
2032	0.0899	2,883,988	19,659	2,903,647	2,341,113	315,000	2.45%	170,812	485,812	2,826,924	1.03
2033	0.0899	2,882,128	19,659	2,901,787	2,337,922	320,000	2.49%	162,969	482,969	2,820,891	1.03
2034	0.0878	2,817,148	19,659	2,836,807	2,277,409	330,000	2.75%	154,448	484,448	2,761,857	1.03
2035	0.0343	1,098,579	19,659	1,118,238	559,206	340,000	3.03%	144,759	484,759	1,043,965	1.07
2036	0.0342	1,098,218	19,659	1,117,877	555,280	350,000	3.30%	133,833	483,833	1,039,113	1.08
2037	0.0195	626,057	19,659	645,716	85,558	360,000	3.51%	121,740	481,740	567,298	1.14
2038	0.0196	628,338	19,659	647,997	86,302	375,000	3.66%	108,560	483,560	569,862	1.14
2039	0.0194	623,419	19,659	643,078	85,968	385,000	3.76%	94,459	479,459	565,427	1.14
2040	0.0194	622,470	19,659	642,129	85,642	400,000	3.88%	79,461	479,461	565,103	1.14
2041	0.0195	626,274	19,659	645,933	86,172	415,000	3.95%	63,505	478,505	564,677	1.14
2042	0.0194	623,031	19,659	642,690	85,760	435,000	4.01%	46,587	481,587	567,347	1.13
2043	0.0195	624,609	19,659	644,268	86,275	450,000	4.08%	28,685	478,685	564,960	1.14
2044	0.0191	613,808	19,659	633,467	85,778	470,000	4.15%	9,753	479,753	565,531	1.12
					\$36,135,287	\$7,200,000		\$2,879,872	\$10,079,872	\$46,215,159	

AVERAGE (MATURITY) LIFE	11.31 YEARS
NET INTEREST RATE	3.537%
COST SAVINGS	\$498,755
AVERAGE ANNUAL REQUIREMENT	\$479,994

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.



Project Budget Summary
Maverick County
10458 - Maverick County Water/Wastewater
Improvements (3) Sites

Budget Items	Total Project
Construction	
Construction	\$17,347,713.00
Subtotal for Construction	\$17,347,713.00
Basic Engineering Services	
Construction Engineering	\$498,142.00
Design	\$1,733,772.00
Planning	\$693,509.00
Subtotal for Basic Engineering Services	\$2,925,423.00
Special Services	
Application	\$15,000.00
Environmental	\$60,000.00
Geotechnical	\$164,225.00
Inspection	\$129,600.00
O&M Manual	\$10,000.00
Permits	\$60,000.00
Project Management (by engineer)	\$96,700.00
Surveying	\$737,289.00
Testing	\$23,944.00
Water Conservation Plan	\$25,000.00
Subtotal for Special Services	\$1,321,758.00
Fiscal Services	
Bond Counsel	\$98,879.00
Financial Advisor	\$180,000.00
Fiscal/Legal	\$20,000.00
Subtotal for Fiscal Services	\$298,879.00
Other	
Administration	\$150,000.00
Land/Easements Acquisition	\$1,479,000.00
Subtotal for Other	\$1,629,000.00
Contingency	
Contingency	\$477,227.00
Subtotal for Contingency	\$477,227.00
Total	\$24,000,000.00

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF
\$24,000,000 TO
MAVERICK COUNTY
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF
THE TEXAS WATER DEVELOPMENT FUND II
THROUGH THE PROPOSED PURCHASE OF \$7,200,000
MAVERICK COUNTY, TEXAS COMBINATION TAX AND SUBORDINATE LIEN REVENUE
CERTIFICATES OF OBLIGATION, PROPOSED SERIES 2023
AND
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$16,800,000

(23 -)

WHEREAS, Maverick County (County), has filed an application seeking financial assistance in the amount of \$24,000,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, to finance certain water and wastewater system improvements, identified as Project No. 10458; and

WHEREAS, the County seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of \$7,200,000 Maverick County, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation (together with all authorizing documents (Obligations)) and a grant of \$16,800,000 from the Economically Distressed Areas Program Account of the Texas Water Development Fund II, all as is more specifically set forth in the application and in recommendations of TWDB's staff; and

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

WHEREAS, the commitment is approved for funding under the TWDB's pre-design funding option, and initial and future releases of funds are subject to 31 TAC § 363.16 and § 363.43; and

WHEREAS, the TWDB has carefully considered all matters required by law and in particular the following:

1. the feasibility of creating a conservation and reclamation district to provide and finance the water supply or sewer services, in accordance with Texas Water Code § 16.346;
2. the need of the economically distressed area to be served by the water supply and sewer services in relation to the need of other political subdivisions requiring economically distressed areas financing, and the relative costs and benefits of all applications, in accordance with Texas Water Code § 17.929(a)(1);

3. the availability to the political subdivision of revenue from alternative sources for the payment of the cost of the proposed project, in accordance with Texas Water Code § 17.929 (a)(2);
4. financing of the proposed water supply or sewer project, in accordance with Texas Water Code § 17.929(a)(3);
5. the feasibility of achieving cost savings by providing a regional facility for water supply and wastewater service and the feasibility of financing the facilities by using funds from the economically distressed areas account or any other financial assistance, in accordance with Texas Water Code § 17.929(a)(5);
6. the rates, fees, and charges that the average customer to be served by the project will be able to pay, sources of funding available to the County, and any local funds of the County, in accordance with Texas Water Code § 17.933(d)(1);
7. sources of funding available to the County from federal and private funds and from other state funds, in accordance with Texas Water Code § 17.933(d)(2);
8. any local funds of the County to be served by the project if the economically distressed area to be served is within the boundary of the County, in accordance with Texas Water Code § 17.933(d)(3);
9. the just, fair, and reasonable charges for water and wastewater service as provided in the Texas Water Code, in accordance with Texas Water Code § 17.933(d)(4);

WHEREAS, the TWDB hereby finds:

1. that the County has submitted a proposed program of water conservation 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;
2. that the area to be served by the proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available, in accordance with Texas Water Code § 17.929(b);
3. that the County and City have adopted model subdivision rules as promulgated by the TWDB pursuant to Texas Water Code § 16.343 and the manner of enforcement, in accordance with Texas Water Code § 17.929(a) (4);
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 that 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, in accordance with Texas Water Code § 16.053(j);

5. that a current water audit required by Texas Water Code § 16.0121 and 31 TAC § 358.6 has been completed by the County and filed with the TWDB in accordance with Texas Water Code § 16.053(j); and
6. that the County has considered cost-effective innovative, nonconventional methods of treatment and will evaluate alternatives in greater detail through the planning phase of the project, in accordance with Texas Water Code § 17.189(b);
7. that the public interest will benefit from state assistance in the financing of the treatment works, in accordance with Texas Water Code § 17.277;
8. that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project, in accordance with Texas Water Code § 17.933(b).

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

1. based on the finding stated above, the TWDB determines that a nuisance dangerous to the public health and safety exists in the area to be served by the proposed project, pursuant to Texas Water Code § 17.933; and
2. A commitment is made by the TWDB to Maverick County for financial assistance in the amount of \$24,000,000 from the Economically Distressed Areas Account of the Texas Water Development Funds through the TWDB's proposed purchase of \$7,200,000 Maverick County, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023 and a grant of \$16,800,000. This commitment will expire on December 31, 2023.

This 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 County's compliance with all applicable requirements contained in 31 TAC Chapter 363;
3. the Obligations and Grant Agreement must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations and Grant Agreement that restricts or limits the TWDB's full exercise of these remedies shall be of no force and effect;
4. loan proceeds and grant funds are public funds and, as such, the Grant Agreement and 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;

5. loan proceeds and grant funds 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 and Grant Agreement 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;
6. 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, under the contract, and acceptable to the Executive Administrator;
7. 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 agreement or trust agreement, approved as to form and substance by the Executive Administrator, and shall submit that executed agreement to the TWDB;
8. the Executive Administrator may require that the County execute a separate financing agreement in form and substance acceptable to the Executive Administrator;
9. 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;
10. 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;
11. 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;

12. the Obligations must contain a provision requiring the County to levy a tax or maintain and collect sufficient rates and charges to produce system revenues in an amount necessary to meet the debt service requirements of all outstanding obligations and to maintain the funds established and required by the Obligations;
13. the Obligations must include a provision requiring the County to use any loan proceeds from the Obligations that are determined to be surplus proceeds remaining after completion of the project and after completion of a final accounting in a manner approved by the Executive Administrator;
14. prior to closing, the County shall submit documentation evidencing the adoption and implementation of sufficient system rates and charges or, if applicable, the levy of an interest and sinking tax rate sufficient for the repayment of all system debt service requirements;
15. the County must immediately notify TWDB, in writing, of any suit against it by the Attorney General of Texas under Texas Penal Code § 1.10(f) (related to federal laws regulating firearms, firearm accessories, and firearm ammunition);
16. the Obligations must provide that the County will comply with all applicable TWDB laws and rules related to the use of the financial assistance;
17. the Obligations must provide that the County must comply with all conditions as specified in the final environmental finding of the Executive Administrator when issued, including the standard emergency discovery conditions for threatened and endangered species and cultural resources;
18. the Obligations must contain a provision requiring the County to maintain insurance coverage sufficient to protect the TWDB's interest in the project;
19. the Obligations must provide that the County will submit annually, an audit prepared by a certified public accountant in accordance with generally accepted auditing standards;
20. the 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 and

manufactured goods produced in the United States, as required by Texas Water Code § 17.183;

Conditions Related To Tax-Exempt Status:

21. 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;
22. 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;
23. 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);
24. 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;
25. 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;
26. 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;
 27. 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;
 28. 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;
 29. the transcript must include evidence that the information reporting requirements of § 149(e) of the Code will be satisfied. This requirement may be satisfied by filing an

IRS Form 8038 with the Internal Revenue Service. In addition, the applicable completed IRS Form 8038 or other evidence that the information reporting requirements of § 149(e) have been satisfied must be provided to the Executive Administrator within fourteen (14) days of closing. The Executive Administrator may withhold the release of funds for failure to comply;

30. 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;
31. prior to closing, the County shall provide certification that the average weighted maturity of the Obligations purchased by the TWDB does not exceed 120% of the average reasonably expected economic life of the Project;

EDAP Conditions:

32. The Grant Agreement and Obligations must include a provision that requires compliance with Texas Water Code § 16.356 that no revenues received from rates or fees collected from the water supply or wastewater system constructed in whole or in part from this commitment shall be used for any purposes other than utility purposes and that the annual financial statement prepared by the County under Local Government Code § 114.025 shall include a specific report on compliance with this condition;
33. Prior to the release of funds provided for construction, the County must provide the TWDB with evidence satisfactory to the Executive Administrator that the County has received and will maintain a designation as an authorized agent of the Texas Commission on Environmental Quality, in compliance with Texas Health and Safety Code § 366.035;
34. The Grant Agreement and Obligations must include a provision that requires the County adequately enforce the authority granted to the County by Texas Water Code § 17.934(a)(2) to require and ensure that all property owners capable of receiving service from the system constructed with the funds provided by this resolution are actually connected to the sewer system constructed by these funds within a reasonable period of time not to exceed 90 days from the date the County notifies the property owner that service is available; provided, however, that the Executive Administrator may extend this time upon written request for good cause shown.

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

Special Conditions:

35. prior to closing, the County shall adopt and implement the water conservation program approved by the TWDB;

36. prior to closing, the County shall submit a 2022 audit, the form and substance of which is satisfactory to the Executive Administrator;
37. prior to closing, the County and the Executive Administrator shall execute an Agreement that sets forth the terms and uses of the grant funds;
38. the Grant Agreement must include a provision stating that the County shall return any grant funds that are determined to be Surplus Funds in a manner determined by the Executive Administrator;
39. prior to the release of funds for design, the County shall complete an assessment by the TWDB of its financial, managerial, and technical capabilities;
 - a. If the assessment identifies any deficiencies, the County, prior to the release of funds, must receive approval by the TWDB of a plan of action to address those deficiencies;
 - b. Prior to the release of funds for construction, the County must demonstrate implementation of the plan of action in a manner satisfactory to the Executive Administrator;
40. prior to closing, the County shall submit an executed agreement between it and the City of Eagle Pass, the form and substance of which is satisfactory to the Executive Administrator

APPROVED and ordered of record this 6th day of June 2023.

TEXAS WATER DEVELOPMENT BOARD

Brooke T. Paup, Chairwoman

DATE SIGNED: _____

ATTEST:

Jeff Walker, Executive Administrator

Review Date:

Project ID:

Water
Wastewater
Other

WATER CONSERVATION REVIEW

Entity:

Other entity:

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

	Total GPCD	Residential GPCD	Water Loss GPCD
Baseline			
5-year Goal			
10-year Goal			

WATER LOSS AUDIT YEAR:

Service connections:

Length of main lines (miles):

Water Loss GCD:

Retail population:

Connections per mile:

Water Loss GPCD:

ILI¹:

1 – Infrastructure Leakage Index only applicable if > 16 connections per mile and > 3,000 service connections

WATER LOSS THRESHOLDS

Water Loss Project:

Wholesale Adjusted:

Threshold Type:

Apparent Loss Gallons per connection per day	Real Loss Gallons per mile per day	Real Loss Gallons per connection per day	Apparent Loss Threshold Gallons per connection per day	Real Loss Threshold Gallons per mile per day	Real Loss Threshold Gallons per connection per day

Does the applicant meet Water Loss Threshold Requirements?

Yes**No****NA****ADDITIONAL INFORMATION****STAFF NOTES AND RECOMMENDATIONS**

DEFINITIONS

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

Apparent losses are paper losses that occur when the water reaches a customer, but the volume is not accurately measured and/or recorded due to unauthorized consumption, customer meter inaccuracy, or billing system and collection data errors.

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.

GCD means gallons per connection 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 3,000 connections and a connection density of more than 16 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.

Real losses are the physical losses, largely leakage, from the infrastructure: mains, valves, and storage tank overflows. Real loss constitutes background leakage (unreported and difficult to detect), unreported leakage (leaks that do not surface but could be detected), and reported leakage (leaks that often surface and those that are detected by the utility through leak detection).

Residential GPCD is the amount of residential water use (single and multi-family customer use) divided by the residential population divided by 365.

Total GPCD is the amount of total system input volume divided by the retail population 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 GPCD is the amount of water loss divided by the retail population divided by 365.

Water Loss per Connection per Day Calculated as the water loss volume divided by the number service connections divided by 365. This indicator allows for reliable performance tracking in the water utility's efforts to reduce water losses. It replaces water loss percentage.

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.

Wholesale Adjusted represents that some utilities provide large volumes of wholesale water to other providers that travel through the general distribution system, so a calculation has been established to adjust for that volume of wholesale water. These adjustments are only applicable for use in determining whether a utility meets or exceeds water loss thresholds in review of their application for financial assistance. These adjustments should not be used for performance tracking or benchmarking.

Recommendation for Nuisance Determination
Maverick County, Texas
TWDB EDAP Project No. 10458
May 12, 2023

On January 27, 2023, the TWDB invited the County to request a TWDB review for issuance of a Nuisance Determination for both projects. The invitations included the EDAP Nuisance Determination Request Form and Supporting Documentation Checklist. Under the 2022 EDAP IUP, projects may be eligible for a maximum grant amount of 70 percent if a public health nuisance exists.

NUISANCE DETERMINATION REQUEST

On March 8, 2023, the TWDB received the County’s Nuisance Determination review request. The request includes a summary of the problem, detailed maps of the proposed project areas, a public health nuisance determination made by a certified sanitarian from the Maverick County Planning Department, an attestation by the Maverick County Commissioner-Precinct 3, and other supporting documentation.

PROJECT AREA AND PROJECT SCOPE VERIFICATION

The TWDB performed a technical review of the Abridged Application, including review of the proposed project scope and area evaluated and scored during the eligibility review, and compared it to the proposed project scope and area identified in the Nuisance Determination request and in the complete application for financial assistance received on February 3, 2023.

The TWDB concludes that the project scope and area identified in the Abridged Application, Nuisance Determination request, and completed application for financial assistance are consistent, and the issues identified in the Nuisance Determination request will be addressed by the proposed project.

EXECUTIVE ADMINISTRATOR’S RECOMMENDATION

After technical review of the County’s Nuisance Determination request and supporting documentation, the Executive Administrator (EA) concurs with the determination that a nuisance, dangerous to the public health and safety, exists in the proposed project area and that the proposed project will contribute to resolving the issues identified in the request.

The EA recommends that the TWDB determine a condition of nuisance exists for the area of the proposed project. The recommendation is based on staff’s desk review of the supporting documentation provided by the County and verification that a public health nuisance, as defined in Section 341.011 of the Health and Safety Code, 30 Texas Administrative Code Chapters 290, and Chapter 285 of the Health & Safety Code exists in the proposed project area.

Our Mission	:	Board Members
Leading the state’s efforts in ensuring a secure water future for Texas and its citizens	:	Brooke T. Paup, Chairwoman George B. Peyton V, Board Member L’Oreal Stepney, P.E., Board Member
	:	Jeff Walker, Executive Administrator

Recommendation for Nuisance Determination
Maverick County, Texas
TWDB EDAP Project No. 10458
May 12, 2023

Sincerely,

Jessica N Pena Digitally signed by Jessica N Pena
Date: 2023.05.23 07:43:09 -05'00'

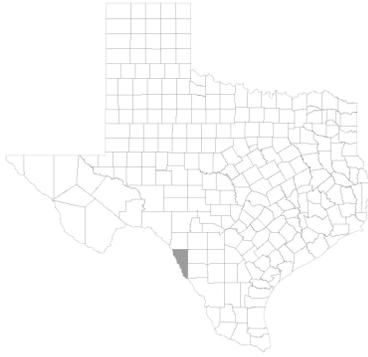
Jessica Peña
Deputy Executive Administrator
Texas Water Development Board

[Our Mission](#)

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

[Board Members](#)

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member | L'Oreal Stepney, P.E., Board Member
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Maverick County

