

# 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 Presidio County and approving by resolution a request from Presidio County for \$4,600,000 in financial assistance consisting of \$1,380,000 in financing and \$3,220,000 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

Presidio County (County) is located along the U.S.-Mexico border. Its county seat is the City of Marfa (City), which is located approximately 190 miles southeast of the City of El Paso and 150 miles southwest of the City of Odessa. The County's population is approximately 7,144 and the City's is approximately 1,780. The County does not provide any water or wastewater services. The County is leading an organized, regional effort to bring first-time water and sewer service to unserved communities throughout the County.

### PROJECT NEED AND DESCRIPTION

There are four general areas that are in need of water and wastewater infrastructure within Presidio County: 1. the Fort D.A. Russell section within the City of Marfa is served by sewer lines that are over 100-years old and have stopped working properly due to age; 2. the East Heights and other areas of the City lack adequate drinking water and wastewater services; 3. the unincorporated area of Las Pampas, about seven miles north of the City of Presidio, has no access to drinking water, thus its residents must haul water from the City of Presidio; and 4. the unincorporated town of Shafter, a silver-mining town located approximately 40 miles southwest of the City, relies on water from an old well owned by the Rio Grande Mining Company. Most of the pipes delivering water to the Shafter residents are above ground and exposed to the elements. In addition, the well's pump house burned down in October 2021 and the system has been under a boil water notice since then.

The project includes planning, acquisition, design, and construction of water and wastewater infrastructure for two areas within the City: 1. the rehabilitation or replacement of the existing clay sewer collection system in the Fort D.A. Russell area, with a population of approximately 70; and 2. extension of the City's water and wastewater systems to provide first-time water and wastewater service to the East Heights area, with a population of approximately 50. The potable water and the treatment of wastewater will be provided by the City. Furthermore, the County will enter into an agreement with the City

<b>COMMITMENT PERIOD: SIX (6) MONTHS TO EXPIRE DECEMBER 31, 2023</b>
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for the operation and maintenance of the project's proposed infrastructure to be located within City limits.

In addition, the project also includes planning, acquisition, and design to identify the most cost-effective solutions to provide potable drinking water for the two unincorporated areas of Las Pampas, with approximately 90 residents, and Shafter, with approximately 36 residents. During the planning phase, the long-term owner and operator of the system will be determined, as well as the best solution for the future operation and maintenance of the proposed infrastructure.

### **PROJECT SCHEDULE**

<b>Task</b>	<b>Schedule Date</b>
Closing	October 15, 2023
Engineering Feasibility Report Completion (End of Planning Phase)	February 26, 2025
Design Phase Completion	August 26, 2025
Start of Construction	February 26, 2026
Construction Completion	April 26, 2028

### **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**

- Water rights
- Fiscal year 2022 audit
- Executed grant agreement
- Return of surplus grant funds
- Completion of financial, managerial, and technical assessment by the City
- Executed agreement with the City

### **Attachments**

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

# Financial Review

## Presidio County

Attachment 1

Risk Score: 2A

Audit Reviewed: FY 2021

### Key Indicators

Indicator	Result	Benchmark
Population Growth, Average Annual 2010-2020	County: -2.40%	State: 1.49%
Top 10 Taxpayers % of Total Revenue	34.70%	10-15%
Median Household Income as % of State	54%	100%
Days of Cash on Hand (3-year Average)	341 days	30-149 days
Debt Service Coverage Ratio	1.0x	1.0x
Net Direct Debt to Total Assessed Valuation	0.20%	2.00-4.99%
Unemployment Rate (March, 2023)	County: 6.30%	State: 4.20%
Working Capital Ratio	11.30	> 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 net direct debt to total assessed valuation is below the benchmark indicating that the County has the capability to acquire additional tax debt without burdening the taxpayers.

### Key Risk Score Concerns

- The population growth of the County has slightly declined over the past ten years, however, 2022 State Water Plan projections show the County population increasing by 63 percent by 2070.
- The County has pledged ad valorem taxes and subordinate lien of the jail revenue as security for the proposed debt with the tax revenue as the primary source of repayment. The County currently does not levy an interest and sinking fund tax but is projected to need an interest and sinking tax rate increase by approximately two cents by fiscal year 2025.
- The unemployment rate for the County is higher than the State. However, this risk is mitigated by the County maintaining a strong assessed valuation collection rate.
- The top ten taxpayers as a percentage of total tax revenue is currently at 34.70 percent with the top customer being the Trans-Pecos Pipeline, LLC at 15.72 percent. The Trans-Pecos Pipeline, LLC is an intrastate pipeline in Texas with an agreement with Mexico's federal electricity commission. A stress test was done to remove the assessed valuation from the County, and a maximum of \$0.0275 I&S rate is projected.

**PLEDGE**

Legal Pledge Name	Ad Valorem Tax and the Jail System 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

**TAXES**

	2022 Tax Year Rate	Max Projected Tax Rate (Year 2025)	Maximum Allowable Rate	3-Year Avg Current Tax Collections	Assessed Valuation
Maintenance & Operation	\$0.4938	\$0.4938	\$1.50	96%	\$769,625,589
Interest & Sinking	\$0.0000	\$0.0232			
Total Tax Rate	\$0.4938	\$0.5170			

Cost Savings

Based on a 20-year maturity schedule and current interest rates, the County could save approximately \$135,162 over the life of the financing. The County is also saving \$3,220,000 in grant funding.

<b>Responsible Authority</b>	Presidio County
<b>Program</b>	EDAP
<b>Commitment Number</b>	G1001640, G1001658, L1001639, L1001657
<b>Project Number</b>	10457
<b>List Year</b>	2022
<b>Type of Pledge</b>	Combo Tax and Revenue
<b>Pledge Level (if applicable)</b>	Second Lien
<b>Legal Description</b>	\$2,275,000 Grant Agreement, \$945,000 Grant Agreement, \$975,000 Presidio County, Texas Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023, \$405,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Taxable Series 2023
<b>Tax-exempt or Taxable</b>	Tax-Exempt, Taxable
<b>Refinance</b>	No
<b>Outlay Requirement</b>	Yes
<b>Disbursement Method</b>	Escrow
<b>Outlay Type</b>	Outlay = Escrow Release
<b>Qualifies as Disadvantaged</b>	Yes
<b>Financial Managerial &amp; Technical Complete</b>	No
<b>Phases Funded</b>	Planning, Acquisition, Design, and Construction
<b>Pre-Design</b>	Yes
<b>Project Consistent with State Water Plan</b>	Yes
<b>Water Conservation Plan</b>	Exempt
<b>Overall Risk Score</b>	2A

### PROJECT TEAM

<b>Team Manager</b>	<b>Financial Analyst</b>	<b>Engineering Reviewer</b>	<b>Environmental Reviewer</b>	<b>Attorney</b>
Mireya Loewe	Arnoldo Rubio	Francia Harutunian	Lauren Dill	Michael Perez

ISSUE BEING EVALUATED  
FOR ILLUSTRATION PURPOSES ONLY  
Presidio County

**\$975,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of  
Obligation, Series 2023**

Dated Date: 10/15/2023      Source: EDAP  
 Delivery Date: 10/15/2023      Rate: 3.45%  
 First Interest: 12/1/2023      IUP Year: 2022  
 First Principal: 6/1/2024      Case: Tax and Revenue  
 Last Principal: 6/1/2043      Admin.Fee: \$0  
 Fiscal Year End: 9/30      Admin. Fee Payment Date: N/A  
 Required Coverage: 1.0      Total Assessed Valuation: \$769,625,589

**\$405,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of  
Obligation, Proposed Taxable Series 2023**

Dated Date: 10/15/2023      Source: EDAP  
 Delivery Date: 10/15/2023      Rate: 4.76%  
 First Interest: 12/1/2023      IUP Year: 2022  
 First Principal: 6/1/2024      Case: Tax and Revenue  
 Last Principal: 6/1/2043      Admin.Fee: \$0  
 Fiscal Year End: 9/30      Admin. Fee Payment Date: N/A  
 Required Coverage: 1.0

FISCAL YEAR	REQUIRED TAX RATE	REQUIRED TAX REVENUES WITH COLL. @ 96%	PROJECTED TOTAL REVENUES	CURRENT DEBT SERVICE	\$975,000 ISSUE				\$405,000 ISSUE				DEBT SERVICE	ACTUAL COVERAGE
					PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT	PRINCIPAL PAYMENT	INTEREST RATE	INTEREST PAYMENT	TOTAL PAYMENT		
2024	0.0203	\$149,210	\$149,210	\$68,237	\$35,000	2.64%	\$19,159	\$54,159	15,000	4.47%	\$11,814	\$26,814	\$149,210	1.00
2025	0.0232	170,555	170,555	67,812	40,000	2.55%	29,595	69,595	15,000	4.47%	18,149	33,149	170,555	1.00
2026	0.0230	169,343	169,343	68,290	40,000	2.45%	28,575	68,575	15,000	4.33%	17,478	32,478	169,343	1.00
2027	0.0135	99,424	99,424	-	40,000	2.41%	27,595	67,595	15,000	4.26%	16,829	31,829	99,424	1.00
2028	0.0133	97,821	97,821	-	40,000	2.41%	26,631	66,631	15,000	4.29%	16,190	31,190	97,821	1.00
2029	0.0131	96,213	96,213	-	40,000	2.39%	25,667	65,667	15,000	4.30%	15,546	30,546	96,213	1.00
2030	0.0135	99,612	99,612	-	45,000	2.39%	24,711	69,711	15,000	4.33%	14,901	29,901	99,612	1.00
2031	0.0133	97,887	97,887	-	45,000	2.40%	23,636	68,636	15,000	4.37%	14,252	29,252	97,887	1.00
2032	0.0137	101,152	101,152	-	45,000	2.45%	22,556	67,556	20,000	4.42%	13,596	33,596	101,152	1.00
2033	0.0135	99,165	99,165	-	45,000	2.49%	21,453	66,453	20,000	4.47%	12,712	32,712	99,165	1.00
2034	0.0139	102,151	102,151	-	50,000	2.75%	20,333	70,333	20,000	4.57%	11,818	31,818	102,151	1.00
2035	0.0136	99,862	99,862	-	50,000	3.03%	18,958	68,958	20,000	4.67%	10,904	30,904	99,862	1.00
2036	0.0132	97,413	97,413	-	50,000	3.30%	17,443	67,443	20,000	4.72%	9,970	29,970	97,413	1.00
2037	0.0136	99,819	99,819	-	50,000	3.51%	15,793	65,793	25,000	4.77%	9,026	34,026	99,819	1.00
2038	0.0138	101,871	101,871	-	55,000	3.66%	14,038	69,038	25,000	4.82%	7,834	32,834	101,871	1.00
2039	0.0134	98,653	98,653	-	55,000	3.76%	12,025	67,025	25,000	4.91%	6,629	31,629	98,653	1.00
2040	0.0136	100,358	100,358	-	60,000	3.88%	9,957	69,957	25,000	4.91%	5,401	30,401	100,358	1.00
2041	0.0138	101,802	101,802	-	60,000	3.95%	7,629	67,629	30,000	4.91%	4,174	34,174	101,802	1.00
2042	0.0140	102,959	102,959	-	65,000	4.01%	5,259	70,259	30,000	4.91%	2,701	32,701	102,959	1.00
2043	0.0128	93,880	93,880	-	65,000	4.08%	2,652	67,652	25,000	4.91%	1,228	26,228	93,880	1.00
			\$2,179,146	\$204,338	\$975,000		\$373,660	\$1,348,660	\$405,000		\$221,148	\$626,148	\$2,179,146	

\$975,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	11.12 YEARS
NET INTEREST RATE	3.446%
COST SAVINGS	\$67,526
AVERAGE ANNUAL REQUIREMENT	\$64,222

\$405,000 ISSUANCE	
AVERAGE (MATURITY) LIFE	11.48 YEARS
NET INTEREST RATE	4.757%
COST SAVINGS	\$67,636
AVERAGE ANNUAL REQUIREMENT	\$29,817

TOTAL AVERAGE ANNUAL REQUIREMENTS	
\$108,957	

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**  
Presidio County  
10457 - Presidio County Water and  
Wastewater Improvements

Budget Items	Total Project
<b>Construction</b>	
Construction	\$1,693,800.00
<b>Subtotal for Construction</b>	<b>\$1,693,800.00</b>
<b>Basic Engineering Services</b>	
Construction Engineering	\$90,000.00
Design	\$500,000.00
Planning	\$140,000.00
<b>Subtotal for Basic Engineering Services</b>	<b>\$730,000.00</b>
<b>Special Services</b>	
Environmental	\$190,000.00
Geotechnical	\$100,000.00
Inspection	\$90,000.00
Permits	\$25,000.00
Surveying	\$210,000.00
<b>Subtotal for Special Services</b>	<b>\$615,000.00</b>
<b>Fiscal Services</b>	
Bond Counsel	\$65,000.00
Financial Advisor	\$50,750.00
Fiscal/Legal	\$8,350.00
Issuance Costs	\$5,000.00
<b>Subtotal for Fiscal Services</b>	<b>\$129,100.00</b>
<b>Other</b>	
Land/Easements Acquisition	\$70,000.00
Other (Groundwater study; Contingency for PM & Admin)	\$390,000.00
Project Legal Expenses	\$50,000.00
<b>Subtotal for Other</b>	<b>\$510,000.00</b>
<b>Contingency</b>	
Contingency	\$922,100.00
<b>Subtotal for Contingency</b>	<b>\$922,100.00</b>
<b>Total</b>	<b>\$4,600,000.00</b>

A RESOLUTION OF THE TEXAS WATER DEVELOPMENT BOARD  
APPROVING AN APPLICATION FOR FINANCIAL ASSISTANCE IN THE AMOUNT OF  
\$4,600,000 TO  
PRESIDIO COUNTY  
FROM THE ECONOMICALLY DISTRESSED AREAS PROGRAM ACCOUNT OF  
THE TEXAS WATER DEVELOPMENT FUND II  
THROUGH THE PROPOSED PURCHASE OF  
\$975,000 PRESIDIO 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 \$2,275,000  
AND  
THROUGH THE PROPOSED PURCHASE OF  
\$405,000 PRESIDIO COUNTY, TEXAS, COMBINATION TAX AND SUBORDINATE LIEN  
REVENUE CERTIFICATES OF OBLIGATION, PROPOSED TAXABLE SERIES 2023 AND  
THE EXECUTION OF A GRANT AGREEMENT IN THE AMOUNT OF \$945,000

(23 - \_\_)

WHEREAS, Presidio County (County), has filed an application seeking financial assistance in the amount of \$4,600,000 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. 10457; and

WHEREAS, the County seeks financial assistance from the Texas Water Development Board (the TWDB) through the TWDB's proposed purchase of \$975,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023 (together with all authorizing documents (Obligations)) and a grant of \$2,275,000, and through the proposed purchase of \$405,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Taxable Series 2023 (together with all authorizing documents (Obligations)) and a grant of \$945,000 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 jail 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 is exempt from requirements to adopt a water conservation program because the implementation of a water conservation program is not reasonably necessary to facilitate water conservation as the County does not currently provide water or wastewater services;

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 the City of Marfa (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 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);
6. that the public interest will benefit from state assistance in the financing of the treatment works, in accordance with Texas Water Code § 17.277;
7. 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 the Presidio County for financial assistance in the amount of \$4,600,000 from the Economically Distressed Areas Account of the Texas Water Development Funds through the TWDB's proposed purchase of \$975,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023 and a grant of \$2,275,000, and through the proposed purchase of \$405,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Taxable Series 2023 and a grant of \$945,000. 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 Obligation and Grant Agreements must contain a provision that the TWDB may exercise all remedies available to it in law or equity, and any provision of the Obligations or Grant Agreements 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 Agreements 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 Agreements 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 of the \$975,000 Presidio County, Texas, Combination Tax and Subordinate Lien Revenue Certificates of Obligation, Proposed Series 2023:

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. the County’s federal tax certificate shall provide that the weighted average maturity of the Obligations purchased by the TWDB does not exceed 120% of the weighted average reasonably expected economic life of the Project;

EDAP Conditions:

32. the Grant Agreements 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 Agreements 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 the release of funds for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must either issue a written finding that the County has the right to use the water that the project financed by the TWDB will provide or a written determination that a reasonable expectation exists that such a finding will be made before the release of funds for construction; and
36. prior to the release of construction funds for that portion of a project that proposes surface water or groundwater development, the Executive Administrator must have issued a written finding that the County has the right to use the water that the project financed by the TWDB will provide;
37. prior to closing, the County shall submit a 2022 audit, the form and substance of which is satisfactory to the Executive Administrator;
38. prior to closing, the County and the Executive Administrator shall execute Agreements that sets forth the terms and uses of the grant funds;
39. the Grant Agreements 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;
40. at the discretion of the Executive Administrator, the City shall complete an assessment by the TWDB of its financial, managerial, and technical capabilities prior to the release of funds for design;

- a. if the assessment identifies any deficiencies, the City, 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 City must demonstrate implementation of the plan of action in a manner satisfactory to the Executive Administrator;
41. prior to closing, the County shall submit an executed agreement between it and the City, 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**

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

**WATER LOSS AUDIT YEAR:**

Service connections:

Length of main lines (miles):

Water Loss GCD:

Retail population:

Connections per mile:

Water Loss GPCD:

ILI<sup>1</sup>:

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  
Presidio County, Texas  
TWDB EDAP Project No. 10457  
May 12, 2023

On January 27, 2023, the TWDB invited the County to request a TWDB review for issuance of a Nuisance Determination. The invitation 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 February 23, 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, public health nuisance determinations made by the Presidio County Sanitarian, an attestation by the Presidio County Judge, 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 that 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.

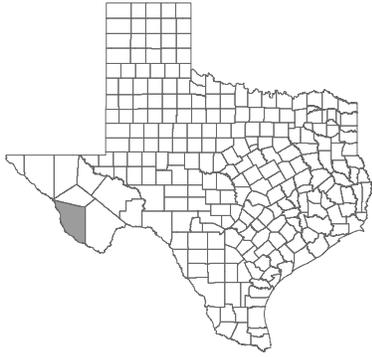
The EA recommends that the TWDB determine a condition of nuisance exists for the area of the proposed project. The recommendation is based on staff's desk review of the supporting documentation provided by the County and verification that a public health nuisance, as defined in Section 341.011 of the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

Recommendation for Nuisance Determination  
Presidio County, Texas  
TWDB EDAP Project No. 10457  
May 12, 2023

Sincerely,

**Jessica N Pena** Digitally signed by Jessica N Pena  
Date: 2023.05.23 07:45:18 -05'00'

Jessica Peña  
Deputy Executive Administrator  
Texas Water Development Board



# Presidio County

