



SIERRA CLUB

LONE STAR CHAPTER

To: The Honorable Tracy King, Chair

Honorable Members, House Committee on Natural Resources

Att: Jayna.Grove_sc@senate.texas.gov, committee clerk

From: Cyrus Reed, Legislative and Conservation Director, Lone Star Chapter of the Sierra Club, cyrus.reed@sierraclub.org, 512-888-9411 (Office) and and Evgenia Spears, Water Program Coordinator, evgenia.spears@sierraclub.org

Re: Monitoring: Monitor the agencies and programs under the Committee’s jurisdiction and oversee the implementation of relevant legislation passed by the 88th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure the intended legislative outcome of all legislation, including the following:

- ***SB 28, relating to financial assistance provided and programs administered by the Texas Water Development Board.***

September 24th, 2024

The Lone Star Chapter of the Sierra Club is pleased to offer these brief written comments to the House Committee on Natural Resources as part of their interim charges. The Lone Star Chapter is the state chapter of the Sierra Club, one of the oldest and largest conservation organizations in the US, whose mission is “To explore, enjoy, and protect the wild places of the earth; To practice and promote the responsible use of the earth’s ecosystems and resources; To educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.”

We are appreciative of the charges of the committee and look forward to working with the legislature to promote policies and funding which assure an adequate and reliable water supply for people through improved water systems and water supplies, but also sufficient waters

instream and flows to the bays and estuaries. To do so requires improved coordination between state agencies, including new issue areas where state agencies have not worked effectively before, including in areas related to water rights and building codes.

Before turning to SB 28 implementation, we wanted to highlight the good work being done by the Texas Water Development Board (TWDB) in recently adopting the state's first Statewide Flood Plan. We followed and participated at the local and state level on the development of the State Flood Plan (Required by SB 8 from the 2019 legislative session), which was recently approved by the TWDB and has been submitted to the Legislature. We were also very supportive of the sunset legislation related to both the TWDB and TCEQ, supported the need for more funding for the Flood Infrastructure Fund and specific funding direction and policy related to water reuse and conservation among other issues. We were also very supportive of the Legislature's previous efforts to create a Produced Water Consortium, of which we are a member. Recently the Consortium finalized our biannual report, which this year is focused on a number of pilot projects funded by the Legislature. We were also supporters of *Senate Bill 1289, relating to the disposal of reclaimed wastewater*, which will allow more direct reuse projects to proceed through a TCEQ regulatory process. In essence, this will allow water to be reused in buildings and other systems before it is discharged, potentially saving hundreds of thousands of acre-feet every year. Other organizations will address this important bill in testimony today, but our understanding is that the rulemaking is currently being reviewed and prepared by the TCEQ staff and we look forward to participating in this important rulemaking. We recognize that further funding opportunities in loans and for some smaller communities grants will be needed to incentivize water reuse throughout Texas.

SB 28: Efforts, including funding, on Water Conservation, Lowering Water Loss and Reuse are key to reliable water supply

The Sierra Club very much appreciates the deliberative public input and rulemaking process that TWDB has engaged in over the past six months in developing a framework to implement SB 28. To their credit, the TWDB sought informal stakeholder feedback through surveys, invitations for public comment at Board meetings, a stakeholder meeting, and a dedicated Texas Water Fund email.

Water management in Texas is difficult. With a climate that is variable and changing, frequent flooding and droughts, a growing population and industrialization that requires vast water use, and aging infrastructure, water suppliers should and must prioritize water conservation, elimination and the exploration of water reuse projects as ways to make our systems more reliable, and assure adequate supply. In general, water conservation and efforts to mitigate

water loss - mainly due to the loss of water in leaky pipes, valves and other water infrastructure - are key measures identified in the State Water Plan. While we did not completely endorse SB 28 because of some concerns on the language about the New Water Supply fund, the Sierra Club was and is very supportive of the money earmarked in SB 28 for the water awareness campaign, and general outreach and education on the need to prioritize conserving our precious water resources, as well as the money focused on water conservation, water loss and water reuse projects. While the Texas Water Fund will be directed towards enhancing existing Texas Water Development Board (TWDB) programs like the Drinking Water and Clean Water State Revolving Funds (DWSRF and CWSRF), the Rural Water Assistance Fund, DFund, SWIFT, and others, we are very supportive of the law's requirement to assure water infrastructure investments in rural communities and strategies that will help better utilize the water that we already have such as water loss mitigation and water conservation projects. Investment in a statewide water awareness campaign will help Texans understand the value of water and promote a water conservation ethic in the state. Assuring that a significant portion of the money from Prop 6 is dedicated to both water loss and conservation projects are key to a reliable water supply. The elimination of water loss and water reuse should be a major focus of this and future funding, and we hope that the "up to \$750" million to be used through the Texas Water Fund will have an emphasis on Shovel-Ready Projects for Water Loss and Water Conservation.

Recently, through a memo discussed on July 23rd, the TWDB announced how they plan to spend the \$1 billion approved by voters. We are supportive. The plan, which is a flexible framework, anticipates utilizing the \$1 billion from the Texas Water Fund through the Rural Water Assistance Fund (RWAF), Water Loan Assistance Fund (WLAF), a statewide water public awareness program, the SWIFT program, potential leveraging through other existing financial assistance programs, and the New Water Supply for Texas Fund. As Table 1 shows, the TWDB has put significant resources toward water loss, water conservation and water awareness programs even as we await more detail on the "New Water Supply Project," which will require future rulemaking. We would highlight the great work TWDB has done to increase the funding from \$1 billion through bond leveraged funding under the existing SWIFT program meaning the total amount of money could be closer to \$3 billion.

Table 1. TWDB SB 28 Categories of Funding, as proposed in July 23rd Memo by Interim Executive Administrator

Funding Category	Funding Description	Amount
Rural Water Assistance Fund	<i>100 percent grant for conservation/water loss projects from SRF solicitation (under 1,000 population)</i>	\$45,000,000
	<i>90 percent grant/10 percent loan or local match for conservation/water loss projects from SRF solicitation (1,000 to 10,000 in population)</i>	\$130,000,000
	<i>High risk or need projects (100 percent grant)</i>	\$20,000,000
	subtotal	\$195,000,000
Water Loan Assistance Fund	<i>70 percent grant/30 percent loan or local match for conservation/water loss projects from 2025 SRF solicitation (10,001 to 150,000 in population); note \$25 million in funding will be reserved for construction-ready projects that have substantially completed all state or federal permitting</i>	\$90,000,000
Statewide water public awareness program	<i>Includes both direct \$10 million contract and \$5 million reserved for future TWDB-led opportunities to invest in K-12 educational resources and programming, data visualization tools, or other related</i>	\$15,000,000

	<i>initiatives.</i>	
SWIFT program support	<i>The Transfer of \$300 million to SWIFT will allow the financing of nearly \$1.7 billion through State Water Implement Revenue Fund for Texas bonds to be issued this fall; can support both infrastructure and water conservation strategies.</i>	\$300,000,000
Potential bond leveraged funding through existing financial assistance programs		\$150,000,000
New Water Supply for Texas Fund	<i>Note that rulemaking for these funds will begin in Fall of 2024 with applications likely in 2025</i>	\$250,000,000
Grand Total		\$1,000,000

Moreover, just last month, the TWDB approved a prioritization of water loss projects and the Sierra Club supported this effort, as they have prioritized small, medium and larger projects, including many smaller rural projects which will require grant funding. Through our input to the TWDB we have made suggestions on identifying projects for further water loss mitigation and water conservation. We hope to work with the TWDB and the legislature to continue to provide additional funding for these efforts as it appears that with the prioritization of projects identified in August, the majority of the funds are already “spoken for” subject to the due diligence application process.

Thus, while we support the high-level goals of the prioritization system and recognize the TWDB’s efforts to distribute the funds in a timely and efficient manner, we look forward to opportunities for continued public engagement as the agency contemplates how future appropriations might be administered. For example, research continues to be published on the numerous potential causes of water loss and the most cost-effective solutions, with insights that may be helpful to identify projects that are likely to deliver the greatest benefit for each dollar spent. We recommend that the TWDB formally re-evaluate its project selection policies with

each new Texas Water Fund appropriation to ensure they reflect the current state of the industry and address the needs expressed by utilities through the public comment process.

Table 1. Prioritized Water Loss Projects, August 2023

Category	Number of Projects Identified	Total Need
Texas Water Fund - Water Loss Mitigation Projects Priority List of Projects - Less Than 1,000 Population Served	17	\$42,153,060
Texas Water Fund - Water Loss Mitigation Projects Draft Priority List of Projects - 1,000 to 10,000 Population Served	49	\$330,675,639
Texas Water Fund - Water Loss Mitigation Projects Priority List of Projects - 10,000 to 150,000 Population Served	9	\$108,415,710

Source: TWDB, August board meeting packet, August 2024.

Since effective water loss mitigation is impossible without accurate data, we applaud the use of SRF set-aside dollars for the new Technical Assistance in Water Loss Control Enhanced (TAWLC-Enhanced) technical assistance and outreach program which will aid utilities in completing or improving their water loss audits. We encourage the TWDB to continue supporting technical assistance and consider increasing funds allocated for these activities whenever possible. Technical assistance to support water loss mitigation can also extend beyond the completion of audits: additional resources that would be helpful for utilities (regardless of whether they have received Texas Water Fund or SRF assistance) include tools to support effective utility operations after water loss control programs have been implemented. These could include training and resources related to leak detection, pressure monitoring, community engagement, and planning for regular maintenance and other technical interventions.

Water Loss Mitigation Projects

- We suggest that TWDB utilize recent water loss audits to identify communities that are above the TWDB's threshold set for HB 3605 compliance and proactively reach out to them through the TA program.
- Another approach is to utilize the most recent Water Loss Audit data and perform a Frontier Analysis (like the one performed in Hidden Reservoirs) to identify low performing utilities.
- Consider creating set-aside funds, more favorable financing opportunities, and prioritization points for water loss mitigation projects in existing programs, particularly programs with limited financial capacity.

Water Conservation Projects:

- Utilize 5-year water conservation plans to identify water utilities with high GPCD, 5-10 year goals that are not progressive
- Set aside a certain amount of funds for water conservation, including grants . As we have seen with SWIFT, utilities do not generally apply for funds to support water conservation programs. There is a concern that this particular part of the program could be undersubscribed.

“New Water Supply” Projects Require More Study and Careful Coordination between the TWDB, TPWD and TCEQ, Groundwater Districts and the Produced Water Consortium .

We understand the Legislature's and the Committee's desire to explore new water supply options such as desalination and produced water. The Sierra Club has serious concerns about the potential public health and environmental impacts of such potential projects, which could be funded through the New Water Supply for Texas Fund. As an organization, the Sierra Club has expressed concern about the enumerated new water supply projects eligible for funding under the New Water Supply for Texas Fund. These projects could have numerous environmental, social and economic concerns associated with their development, and lack the proper regulatory framework to mitigate those concerns. For example, produced water can contain salts, metals, radioactive materials, and chemical additives that can be harmful to human health and the environment. Further, marine and seawater desalination projects can pose harms to the environment and people along the Texas Coast and will need to be carefully planned and constructed to ensure those harms are minimized.

Our recommendations include:

- o Fund studies on groundwater/surface water interaction to quantify the impact of groundwater withdrawals and water management on surface water rights, which will require careful coordination between TCEQ and TWDB.
- o Provide Groundwater Conservation Districts with the resources, including updated and improved groundwater availability models, to identify and manage for sustainable levels of groundwater pumping.
 - Produced Water: Complete Phase 1 and subsequent Phase 2 pilot projects to study constituent characterization, perform risk and toxicology assessments, and assess how produced water projects could impact public health and the environment – as recommended by the Texas Produced Water Consortium. Again, the Sierra Club has serious concerns with direct discharge projects since many of the constituents found in produced water are not well understood, and water quality standards for many of these constituents have not been established. However, as a member of the Consortium, we have also seen some preliminary results in certain land applications that hold promise for a potential beneficial use.
 - Wait for TCEQ to establish protective water quality standards before any funding is used for desalination and produced water projects. Currently, the State of Texas does not have specific narrative and numeric salinity gradient standards unlike many other states. Desalination projects are of particular concern because of their potential impact on aquatic species of concern, which is why coordination and consultation with the TPWD is so important.
 - Prioritize new water supply projects that have demonstrated minimal environmental and health impacts.
 - Prioritize water supply projects that have been identified through the state Regional Planning Process. Before approving water supply projects that have not been vetted through that process and identified as a valid water supply project, start with smaller demonstration and pilot projects.

More money will be needed for flood control, water projects and new water

While the scope and size of any new water funding is yet unknown, there is no doubt this and other committees will be tasked with making decisions about how much money to invest in water infrastructure, flood protection and “new” water supplies. According to the 2022 State Water Plan, the population of Texas is projected to increase 73 percent between 2020 and 2070, from 29.7 million to 51.5 million. Meeting water supply demands in 2070 will cost an additional \$80 billion, with more than half of this funding coming from state assistance. According to the 2024 State Flood Plan recently adopted in August, the regional flood planning groups recommended 4,609 flood risk reduction solutions: 3,097 flood management evaluations, 615 flood mitigation projects, and 897 flood management strategies in the regional

flood plans with an estimated total implementation cost of more than \$54.5 billion. It is important to note that roughly 40% of this is related to the Ike Dyke proposal.

Recently, the TWDB itself identified 10 exceptional item requests in its LAR for 2026 and 2027 that represent major outlays of taxpayer funds. The Sierra Club will be making public comments at the Board's October 4th Legislative Budget Board meeting, but we are generally supportive. A copy of that document can be found here -

https://www.twdb.texas.gov/publications/reports/administrative/doc/LAR_FY2026-2027.pdf.

It's important to note that these exceptional item requests do not ask for major outlays in additional funding for major infrastructure projects, because the Board is well aware that separate conversations will occur outside the "normal" LBB and appropriations process. As an example, the Board is not asking for additional flood infrastructure monies even though the State Flood Plan identifies some \$54 billion in need. Thus, this committee can expect a more robust conversation outside of normal funding needs identified in the LAR. Still, there are a number of EI requests that we wish to highlight.

Exceptional Item Requests

1. Full Time Equivalent (FTE) Increase

The agency is seeking an increase to the FTE cap of 50, from 482.5 to 532.5. No additional General Revenue is needed to support this increase in the FTE cap.

2. Agricultural Water Conservation Fund

This request includes a \$15 million General Revenue appropriation to be transferred to the Agricultural Water Conservation Fund to continue providing agricultural water conservation loans and grants to public entities over the next 10 years, allowing the agency to continue to provide grants and loans in rural areas of Texas where agriculture is an important sector of the local economy. .

3. Economically Distressed Areas Program (EDAP) Needs Assessment

This request would fund a statewide needs assessment for the EDAP program. To evaluate the needs of economically distressed areas of the state, this study would identify funding needs and potential obstacles and pitfalls communities are facing providing adequate water and wastewater services to residents. The total cost of this exceptional item is \$800,000 for the FY 2026-27 biennium.

4. Groundwater Data and Collection Analysis

This request includes funding to support the TWDB Groundwater Recorder Well, Water Quality, and Springs Monitoring programs. Funding will support maintenance and growth of the Recorder Well and Springs Monitoring programs and provide additional funding to address the rising costs of water quality analyses in the Water Quality and

Springs Monitoring programs. The request includes 2 FTEs and the total cost of this exceptional item is \$745,121 for the FY 2026-27 biennium.

5. Surface Water Data and Collection Analysis

This request includes funding to improve the quality and ensure the availability of key surface water datasets, specifically evaporation, volumetric reservoir storage capacity, sedimentation rates for water supply reservoirs, and measurements of stream flows at key locations throughout the state. Each of these datasets is critical to informing decisions impacting surface water rights permitting, adaptive management of environmental flow standards, regional water supply and flood mitigation planning, and financial assistance for water supply and flood infrastructure projects. The request includes 2 FTEs and the total cost of this exceptional item is \$1,612,368 for the FY 2026-27 biennium.

6. TexMesonet Coverage

This request includes funding to better prepare the state to detect, forecast, and monitor weather conditions that affect water resources management, public safety, agricultural efforts, and the economy. Specifically, this request will enable the TWDB to achieve statewide coverage of hydrometeorological (weather) stations as soon as 2030. The total cost for this exceptional item is \$1,880,000 for the FY 2026-27 biennium.

Again, we will reiterate our view that in approving any funds for new water projects, the regulatory framework must be in place to protect communities, habitats, endangered species and downstream users - including aquatic environments.

More efforts and coordination are needed to assure adequate flows for environmental purposes and to identify water rights that are not being used

As an organization, we are appreciative and supportive of the state requirement to assure minimal environmental flows in our rivers, and especially into our bays and estuaries. This committee and the legislature has taken seriously the need to protect our coastal communities and environments, and recent funding for TCEQ - and improvements in the TCEQ sunset bill - to complete watershed inflow studies and regulations is helpful, but we are still not adequately ensuring sufficient flows. We recommend that the legislature continue to assure adequate funding to complete the studies, and also increase funding for the Water Bank and Texas Water Trust, and create coordination between TCEQ, TPWD and TWDB on the use of the water trust for meeting environmental flows. As part of this, we believe the TCEQ should be directed - perhaps through a budget rider - to conduct a comprehensive study on non-use of water rights, including anticipation of water rights freed up as older steam electric (older gas and coal plants)

retire, which could free up water for environmental and other uses. The recent experience with Lake Fairfield, in which the state lost a crown jewel of a state park, happened in part because the new owner of the land was able to utilize a water right earmarked for power plant cooling was allowed to be changed and entrusted to a private developer. In short, we need to avoid situations where unused water rights are identified and the state can help determine where it makes sense to protect instream and in-bay flows, and where it makes sense to allow the water to be developed for other needs. This effort could be coordinated with both TPWD and TWDB, since some of this water could be useful for water supply to the extent environmental requirements are met.

Flood protection necessitates RRC, TWDB, TXDOT, TWDB Coordination

While this issue will come up as the Legislature considers recommendations made as part of the Texas State Flood Plan recently adopted by the TWDB, we wanted to express our support now for enhancing coordination among state agencies for floodplain management. This includes improving education for state agencies that perform a variety of permitting functions, such as Texas Parks and Wildlife Department for park properties, Texas Department of Licensing and Regulation for mobile home installations, the Railroad Commission of Texas for propane tank installations, and the Texas Water Development Board itself, as they develop best management practices for flooding.

Building Code Development is a mismatch of local and state efforts and better standards and coordination needed

As part of the State Flood Plan, TWDB is lifting up a request from many local regional groups that the state consider construction standards and building codes to better protect Texans from flooding, and gain access to the Building Resilient Infrastructure and Communities (BRIC) program funding. Our view is that building code standards and enforcement in Texas needs a serious review and update. Last session, both the Senate and House approved SB 2453 to give SECO more specific authority to raise the energy code, though it was vetoed by the Governor over unrelated issues. Currently, a number of state agencies, including the Comptroller's SECO (the State Energy Conservation Office) on energy codes, TDHCA to some degree on low-income housing, the statewide Plumbing Board on plumbing codes, TDI on coastal building codes to be certified for access to TWIA. Local county and city officials have varying degrees of authority over the development, adoption and enforcement of building codes. Indeed, the rules on building codes in municipalities, and counties vary considerably. Currently, the state municipal

code has been set at the 2012 minimum International Residential Code, while county standards are still at the 2006 International Residential Code. Statewide, minimum building codes are needed for improving Texas' eligibility for federal funding programs like the Building Resilient Infrastructure and Communities program. Recently, the City of Houston was unable to access certain federal funds even though they had raised their own building standards, but the state had not. Statewide codes should take into consideration existing, widely used building codes, including the International Building Code and International Residential Code. According to a 2019 report developed by the National Institute of Building Sciences, simply adopting the current codes (such as the 2021 IRC and 2021 IBC) could provide a 6:1 savings versus costs expended for riverine flood hazards. Texas does not currently have a statewide requirement regarding adoption of building codes, but instead a smattering of statutes that are not well coordinated between different agencies with jurisdiction.

The Sierra Club appreciates the opportunity to file these brief comments. We will continue to provide the Committee with relevant information and input as we approach the legislative session.