



SIERRA CLUB

LONE STAR CHAPTER

To: The Honorable Charles Perry, Chair

Honorable Members, Senate Committee on Water, Agriculture, and Rural Affairs

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

Water System Reliability: Evaluate water systems in Texas and identify opportunities to better equip those systems to serve the public. Review the coordination of relevant state agencies dealing with Texas water issues and identify opportunities for improved coordination and effectiveness.

Monitoring: Monitor the implementation of legislation addressed by the Senate Committee on Water, Agriculture, and Rural Affairs passed by the 88th Legislature, as well as relevant agencies and programs under the committee's jurisdiction. Specifically, make recommendations for any legislation needed to improve, enhance, or complete implementation of the following:

- *Senate Bill 28, relating to financial assistance provided and programs administered by the Texas Water Development Board;*
- *Senate Bill 1289, relating to the disposal of reclaimed wastewater; and*
- *Senate Bill 1648, relating to the Centennial Parks Conservation Fund.*

September 3, 2024

The Lone Star Chapter of the Sierra Club is pleased to offer these brief written comments to the Senate Committee on Water, Agriculture and Rural Affairs 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, 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.

In addition, we also want to highlight the good work being done by the Texas Water Development Board (TWDB) both in recently adopting the state’s first Statewide Flood Plan and in implementing Senate Bill 28. We wanted to recognize the good work on water policy by this committee, the legislature as well as the TWDB. We were 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 water reuse and conservation among other issues. We were also very supportive of Chairman Perry’s previous efforts to create a Produced Water Consortium, of which we are a member, and Senate Bill 1289, relating to the disposal of reclaimed wastewater, which will allow more direct reuse projects to proceed through the TCEQ. Other organizations will address this important bill, 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 bill.

While we did not completely endorse SB 28 because of some concerns on the language about the New Water Supply fund, we are appreciative of the deliberative public input and rulemaking process that TWDB has engaged in. Finally, we have been following and participating 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 will be submitted to the Legislature on or before September 1, 2024.

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

Water management in Texas is difficult. With a climate that is variable and changing, frequent flooding and droughts, a growing population and industrialization, 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. The Sierra Club 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. 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. 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 potentially increase the funding from \$1 billion through bond leveraged funding meaning the total amount of money could be closer to \$3 billion.

Recently, the TWDB approved a prioritization of water loss projects in August 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 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.

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.

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</i> | \$90,000,000 |

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|---|--|---------------|
| | <i>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> | |
| 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 initiatives.</i> | \$15,000,000 |
| 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 |

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

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.

“New Water Supply” Projects will require better coordination between TWDB and TCEQ and other actors like groundwater conservation districts and the Produced Water Consortium.

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.
- 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 efforts and coordination are needed to assure adequate flows for environmental purposes

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. 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.

SB 1648. Centennial Fund

The Sierra Club was a strong supporter of both SB 1648 and the resulting constitutional amendment (Proposition 14), which was approved by voters by an overwhelming majority. After only small amounts of money for land acquisition in past sessions, 2023 represented the first time the Legislature approved major funding for land acquisition. As an organization, we also supported the TPWD's recently updated Land and Water Resources Conservation and Recreation Plan which has set new goals for acquisition based in part on the additional funding. The passage of Prop 14 means that the commission added 50,000 acres to their land acquisition goals by 2033, increasing the goal from 32,000 acres to 82,000 acres; the commission also included a new action to add 5 new state park system properties by 2033. This major investment in our state parks is a huge boost for our local communities as well as the vulnerable wildlife that call our state lands home. The Plan is available here:

<https://tpwd.texas.gov/publications/land-and-water-plan>

We have been pleased with recent acquisitions made by the Texas Parks and Wildlife Commission, including the addition of parkland near Enchanted Rock and an expected addition at Government Canyon, two state parks near both San Antonio and Austin, which once developed, will provide further recreational opportunities to thousands of Texans.

We want to be clear that we believe that the intent of SB 1648 was to allow TPWD to both utilize the interest generated by the \$1 billion for acquiring land, but also utilize the principle itself when there is a strategic ability to acquire important land. Thus, we agree that TPWD must be conservative with taxpayer resources, but that should not prevent the agency from seizing opportunities when available.

In addition, an important effort could be to seek ways to provide funding and incentives for incorporating nature-based solutions, such as open space and floodplain preservation for development or drainage projects. Because TPWD is implementing its Land and Water Plan, and implementing *Senate Bill 1648, relating to the Centennial Parks Conservation Fund* for new parkland acquisition, assuring close coordination between these two agencies could benefit the public with more recreational opportunities while enhancing flood control. As the new session

begins, there should be additional consideration of funding for acquisition of lands for parklands and habitat protection - such as wildlife corridors - and exploration of incentives for private land conservation efforts.

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.