

Suggestions for Comments on the HB 4 Rules Proposed by the Texas Water Development Board – **Last Day to Comment: Monday, September 1, 2014**

Background: In November 2013 Texas voters overwhelmingly approved Prop 6, a proposed state constitutional amendment that created two new state water funds – the State Water Implementation Fund for Texas or SWIFT, and a related State Water Implementation Revenue Fund for Texas or SWIRFT. By virtue of this vote \$2 billion from the State’s Rainy Day Fund to the new SWIFT was authorized and the provisions of House Bill 4, the “enabling legislation” for Prop 6, became effective. HB 4 governs how the SWIFT and the associated SWIRFT will function. The Texas Water Development Board (TWDB), the agency responsible for administering SWIFT and SWIRFT, has now proposed rules to specify how the provisions of HB 4 are to work in practice. The proposed HB 4 rules are officially proposed new “Subchapter M to 31 Texas Administrative code Chapter 363.” TWDB is seeking public comment on the proposed rules. Comments may be emailed to rulescomments@twdb.texas.gov, or comments may be made using TWDB’s online form, which is found at <http://www.twdb.texas.gov/swift/form/index.asp>.

Just FYI – Sierra Club Perspective on the Proposed HB 4 Rules:

Generally speaking the Lone Star Chapter of the Sierra Club believes the proposed rules appear to reflect the legislative intent of HB 4 and constitute a reasonable approach to implementing the legislation although we will suggest some modifications to the rules that we believe will aid the implementation of several provisions of HB 4. Some of these are somewhat technical and relatively minor. A few are somewhat more substantive.

The possible talking points suggested here mainly focus on some positive comments on the proposed rules and a few substantive changes that might be recommended. The most effective comments from individuals would probably focus on only two or three points. Here are some possible points to make:

- (1) Many water suppliers in Texas have demonstrated the power of water conservation to stretch existing water supplies even in the face of dramatic population growth, and that provides a good example to the Water Development Board in showing how much can be accomplished by prioritizing conservation projects in the use of new state financial assistance made available as a result of Prop 6 and related legislation such as HB 4 [any personal experiences with the benefits of water conservation would be good here.]

- (2) The Water Development Board is to be commended for stating publicly in many forums and in the preamble to the proposed HB 4 rules that the 20% set aside for funding water conservation or reuse that is called for in HB 4 is a floor, not a ceiling. The Board is also to be commended for committing to an aggressive effort to make water utilities aware of the possibilities for funding water conservation or reuse projects, because ultimately those types of projects must be brought to the Board for funding if this directive by the Legislature to support conservation and reuse is to be met.
- (3) The Water Development Board should revise the proposed HB 4 rules to make clear that conservation or reuse projects will be the first priority for funding during each funding cycle as long as those projects meet other eligibility criteria. That is one way of helping to assure that the “not less than 20%” target for funding conservation or reuse is met.
- (4) Although “reuse” is included in some definitions of “water conservation” in state statute and other state documents, it is clear from the language in HB 4 (which refers to “water conservation or reuse” [emphasis added] in discussing the 20% set aside) that the Legislature viewed these as separate activities. Therefore, the definition of “water conservation” in the proposed rules should delete the reference to “recycling and reuse.” This would not affect the 20% set-aside for conservation or reuse, and it is not a negative comment about the value of water reuse projects. Separation of the terms in the definitions will help, however, to make sure that projects to reduce water use through conservation will receive the focus of attention they deserve.
- (5) Although Aquifer Storage & Recovery (ASR) projects are important to meeting our water needs in Texas, ASR involving injection and storage of treated wastewater should **not** be considered as “reuse” in the proposed rules for the purpose of meeting the “no less than 20%” set-aside for funding water conservation or reuse projects. ASR projects are eligible for funding in general and should certainly be considered for funding where the projects are feasible and appropriate. But some ASR projects would be so expensive that they might jeopardize the flexibility of the Board in being able to fund conservation project applications if those ASR projects are seen as achieving the 20% set-aside.
- (6) The Water Development Board is to be commended for the prioritization weight that they are proposing in the rules to score projects from applicants who have demonstrated water conservation or whose projects will achieve water conservation.

- (7) Addressing water loss in water utilities by funding projects to repair or replace aging and leaking pipelines and other such infrastructure would be a good use of new funding available through Prop 6 and HB 4. Making sure that we are not losing and wasting our existing water supplies is really one of the first steps to take in meeting our water needs. Any additional, specific recognition of that in the rules language would be important.
- (8) HB 4 give authorization to the Water Development Board to consider other criteria for prioritization of projects for state financial assistance in addition to those specifically stated in the legislation. The Board should consider a scoring criterion that would give additional weight to water projects that have some accompanying or related benefit to the environment. An example might be a surface water pipeline project by an applicant who is donating significant water rights to the existing Texas Water Trust to preserve instream flows in the basin of origin from which the water is to be piped.