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Supplemental Comments of the Lone Star Chapter of the Sierra Club on the Sunset Advisory Commission Staff Report on the Texas Water Development Board (TWDB) and the State Water Implementation Fund for Texas Advisory Committee – Submitted April 13, 2022

The Lone Star Chapter of the Sierra Club – representing 27,000 members in Texas – appreciates the opportunity to submit these comments to the Texas Sunset Advisory Commission staff as a supplement to the joint comments submitted by the Sierra Club and other Texas organizations on the Staff Report on TWDB and the SWIFT Advisory Committee. The Sierra Club in Texas has monitored and interacted with TWDB in all of its permutations since the mid-1960s, a period of almost 70 years. We believe that the agency in its current form has been very well-run, open to and welcoming of public input, and cooperative not only with our organization but with the wide variety of its stakeholders.

Any agency and its operations may be improved, of course, to make it even more efficient and effective. The Sierra Club believes that the issues raised and the recommendations made by the Sunset Commission staff in its report on TWDB have been prepared and presented in that spirit.

As noted in the joint letter from Sierra Club and other organizations, we support the Sunset staff recommendations on:

- **Issue 1** – increasing the efficiency of TWDB’s project review process
- **Issue 2** – enhancing the agency’s collection and analysis of information for a more strategic and comprehensive evaluation of agency programs and developing a coordinated outreach plan
- **Issue 3** – eliminating the SWIFT Advisory Committee and certain outdated reports and adopting statutory changes and management practices to reflect the standard elements of sunset reviews that would enhance TWDB’s effectiveness, efficiency, transparency, and accountability.

However, as pointed out in the joint letter, we believe that the recommendations made in Issue 1 to improve the efficiency of the technical review of projects should not be applied in a way that undermines other aspects of project review such as environmental review. Moreover, we also urge the Sunset Commission and its staff to consider the additional recommendations on Issue 2 and the additional issues that are raised in the joint letter.

With that background, we would like to amplify a few recommendations and issues raised in the joint letter and provide some additional recommendations. We want to emphasize that the following topics and suggestions fall within the current legislative directives to the Texas Water Development Board and are aimed at helping the agency achieve the goals and purposes the Legislature has already set for TWDB. They do not constitute new policy directives. Additional statutory language might be helpful to implement our suggestions, but the recommendations could be put into effect under existing agency authority and in keeping with current policy as adopted by the Legislature.

(1) Improving TWDB’s track record in meeting the conservation/reuse funding goals set by the Texas Legislature for the implementation of the SWIFT program.

As noted in the Sunset staff report, the Legislature in the 2013 legislation creating the SWIFT program established a goal that TWDB “shall undertake to apply not less than” 20% of the SWIFT funds to conservation or reuse projects (a related goal was not less than 10% towards projects for rural political subdivisions or agricultural water conservation). The Sunset staff report found that in the 2016-20 funding cycles TWDB fell far short of that goal: over that five-year period only 3.63% of total funds closed went to water reuse projects and only 3.44% went for water conservation. In other words, at best TWDB only reached a third of the goal.

Obviously, political subdivisions initiate projects and then seek financial assistance from TWDB for their projects. The agency cannot force political subdivisions to bring water reuse or conservation projects to it for SWIFT funding. If political subdivisions do not apply for SWIFT funding for reuse or conservation, then the statutory goal of not less than 20% will not be reached. Certainly, factors such as the question of how to generate a revenue stream from conservation projects that will help a political subdivision repay TWDB for financial assistance is an issue that complicates applying for SWIFT funding for conservation.

However, TWDB could take certain pro-active steps to improve the prospects for applications for SWIFT assistance for conservation and reuse and thus help the agency meet the legislative goal. We acknowledge that TWDB cooperated with Sierra Club in our efforts especially in 2016 when we held workshops in certain areas to inform elected officials and community members about the SWIFT process and the opportunity to apply for SWIFT funds for water conservation projects. One product of that activity was a publication by the Sierra Club and the Texas Living Waters Project entitled [*Navigating the SWIFT Application Process: Water Conservation Projects*](#) (November 2016), which outlined how a political subdivision could apply for SWIFT funding.

Although TWDB cooperated with the Sierra Club in providing speakers for our workshops and information to our consultants for our publication on SWIFT, we undertook a much more active approach to promoting use of SWIFT funds for conservation than did TWDB. However, Sierra Club is not the entity that can provide financial assistance for water conservation projects. TWDB is that entity and has the resources to encourage potential applicants to apply for SWIFT funds for conservation and reuse. Specific guidance and technical expertise from TWDB to potential applicants could enhance prospects for reaching the not less than 20% conservation or

reuse goal of the SWIFT program. Specifically, we recommend the following management action in this regard:

Direct TWDB to undertake a pro-active effort to achieve the statutory goal of not less than 20% of SWIFT funding for water conservation or reuse, by one or more of the following:

- **preparation of a TWDB guidance manual for political subdivisions with examples of conservation or reuse projects for which they could apply for SWIFT financial assistance and an enumeration of ways in which the recipient may meet financial obligations for repayment**
- **encouragement to political subdivisions applying for SWIFT for infrastructure projects to incorporate water conservation program components into the application as an adjunct to the infrastructure project, and development of TWDB guidance to facilitate that effort**
- **preparation of model water conservation programs (not just templates for conservation programs) for different categories of political subdivisions, based on size of population served, that would incorporate components eligible for SWIFT funding.**

We recognize that SWIFT funding is not the only means by which TWDB advances or may advance water conservation in Texas, and we acknowledge the many efforts by the agency's water conservation staff and its Board members to promote and facilitate more efficient water use in all sectors of the state's population and economy. However, we believe that it is critical that the agency uses all resources available to advance conservation, which accounts for roughly a third of the water management strategies in the state water plan to meet Texas water needs over the next 50 years. The funding for conservation and reuse available through SWIFT is one of those resources, and the agency should redouble its efforts to ensure that this resource is not left largely untapped.

(2) Advancing TWDB's efforts to reduce municipal water loss, which wastes existing supplies of potable water and may lead to pressure for costly and unnecessary water development to replace lost water.

The Sierra Club and its partners in the Texas Living Project highlighted in the initial Texas Water Conservation Scorecard in 2016 – and demonstrated again in the 2020 [Scorecard](#) – the very large volume of water that is lost annually in water utility distribution systems in Texas as a result of leaking pipelines, broken water mains, metering issues, and other factors. The Texas Legislature has expressed its concern about this problem in a number of ways, perhaps most prominently in the passage of HB 3605 in 2013, which directed TWDB to establish a water loss threshold for retail public water utilities and to require that utilities above that threshold who apply for state financial assistance for a water supply project must use part of that assistance or alternative funding to address their water loss. [Legislation in 2015 authorized TWDB to waive that requirement if the utility was satisfactorily addressing water loss.]

The joint letter commenting on the Sunset staff report on TWDB – HB 949 – has several specific recommendations to improve the efforts to reduce utility water loss. We would add the

following management actions to that list of recommendations in order that the legislative intent in HB 3605 and HB 949 be met:

Direct TWDB to adopt rules to specify what steps and rate of progress an applicant above the water loss threshold must demonstrate in order to qualify for an exemption from the requirements of HB 3605.

Direct TWDB to monitor the progress in reducing water loss by applicants receiving an exemption from the requirements of HB 3605 and report that information annually to the Board following the submission of annual water loss audits (or every five years for those utilities not required to submit audits each year).

We believe that these two management actions combined with the recommendations made in the joint letter will help to reduce the tremendous waste from water loss in utilities in Texas.

(3) Incorporating attention to climate change impacts into the preparation of the state and regional water plans.

Section 16.051 of the Texas Water Code directs TWDB every five years to “prepare, develop, formulate, and adopt a comprehensive state water plan that incorporates the regional water plans....” That part of the Water Code further states that:

The state water plan shall provide for the orderly development, management, and conservation of water resources and preparation for and response to drought conditions, in order that sufficient water will be available at a reasonable cost to ensure public health, safety, and welfare; further economic development; and protect the agricultural and natural resources of the entire state.

The consensus of climate scientists is that climate change is happening, and numerous studies in Texas and elsewhere indicate that it is having and will have profound impacts in terms of extreme weather events such as drought and far-reaching implications for agriculture and natural resources. In that context, it is incumbent upon TWDB to incorporate attention to climate change impacts into the state water plan and into the rules and guidance governing the regional water plans which are aggregated into the state plan. Therefore, we strongly endorse the recommendations in that regard for “State Water Planning” in the joint letter from several organizations, including the Sierra Club. We would add one suggested management action to those joint recommendations as follows:

Direct TWDB to consult with the State Climatologist in the preparation of rules and guidance for regional water plans and in the preparation of the state water plan to assure that climate change impacts and projected future impacts are considered in the evaluation of existing and future water supplies, projected water demands, recommended water management strategies, and consideration of impacts of the plans on water quality and protection of water resources, agricultural resources, and natural resources.

For a state and regional water planning process that is currently in the early stages of developing water supply plans that will project demands and recommend water management strategies as far in advance as the decade beginning 2080, the State of Texas would be foolhardy not to incorporate the impacts of climate change into those plans.

(4) Ensuring an equitable distribution of state financial assistance for water, wastewater, and flood risk reduction that adequately addresses the unmet needs of disadvantaged communities and economically distressed areas.

The joint letter has several recommendations that speak to the importance of making sure that funds administered by TWDB – including new federal funds – meet the needs of communities and populations that have been traditionally underserved.

Of course, TWDB for a period of over 30 years has had the ability to help address the water supply and wastewater needs of colonias and other socially vulnerable communities through the Economically Distressed Areas Program (EDAP) that Sierra Club has supported and lobbied for since its creation in 1989. The Texas Legislature and Texas voters in 2019 demonstrated strong support for EDAP through the proposal and approval of an additional \$200 million in bond authorization for EDAP. That additional authorization was made tangible by the Legislature in 2021 through a sizable commitment of appropriations to TWDB for EDAP debt service, which will allow new applications to be made for EDAP funds to serve the water and wastewater needs of under-served communities.

We believe that the new funding for EDAP, the infusion of federal infrastructure funding to Texas, and the relatively new flood mitigation funding programs (which may be bolstered in the next session of the Legislature) provide the opportunity for TWDB to make a dramatic impact in meeting water, wastewater, and flood mitigation needs of those Texans who have not had the benefit of services that most of us enjoy. However, the State of Texas must be sure that these monies for disadvantaged communities are spent wisely and directed to those most in need. An independent assessment of TWDB's track record in that regard by an outside entity with the expertise to conduct such an assessment would be valuable. A fresh set of eyes almost always identifies opportunities for improvement that a self-assessment does not.

Therefore, we recommend the following management action:

Direct TWDB to contract with a qualified entity to assess the effectiveness of past and current activities of the agency in meeting the water, wastewater, and flood mitigation efforts of disadvantaged communities in Texas and to recommend any changes in the design or implementation of the agency's programs that would enhance that effectiveness.

We realize, of course, that such a contracted activity would require the application of funds to that purpose. We believe that existing or anticipated funding sources for the agency could be utilized for this purpose but recognize that additional appropriation might be needed. However,

we think this assessment would be valuable to the agency in carrying out its requirements to address the needs of disadvantaged and economically distressed communities and in making sure that monies allocated are spent most effectively.

In conclusion, we again thank the Texas Sunset Advisory Commission and its staff for this opportunity to submit comments on an agency of such importance to the future of our state. Sierra Club has monitored and participated in the sunset review process actively since the 1980s. We have seen some tremendous improvements in many state agencies as a result of the sunset review process. We hope that will be the outcome in the review of TWDB and other agencies in this sunset cycle, and we hope that our insights and recommendations will be helpful in that regard.