

April 19th, 2022

Ms. Jennifer Jones
Executive Director
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711

RE: Texas Water Development Board Sunset Report

Dear Ms. Jones:

Thank you for the opportunity to offer comments regarding the Sunset Advisory Commission's review of the Texas Water Development Board (TWDB). Since the passage of House Bill 4 in 2013, TWDB has made significant strides towards financing critical water supply projects identified within the State Water Plan and engaging in needed outreach efforts with communities and water providers across Texas. Both the agency and the Board deserve commendation for these and other efforts.

Texas 2036 offers three new items for the Sunset Commission's consideration. The first is a new management action recommendation relating to staff recommendations 1.1 and 1.2 in the Sunset Report. The second item includes a modification to staff recommendation 2.1 and a new change in statute recommendation relating to TWDB's provision of financial assistance to certain communities. The third is a new issue relating to the consideration of droughts worse than the Drought of Record within the state and regional water planning process. These recommendations are described in greater detail below.



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Modification to Issue 1. Adopt specific performance measures to track TWDB achievement in processing applications for financial assistance.



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Sunset Staff recommendations 1.1 and 1.2 require that TWDB establish internal procedures relating to reviews of applications for financial assistance for water projects. Recommendation 1.1 requires that TWDB establish performance metrics and goals for the project application review process. Recommendation 1.2 authorizes the agency to perform a risk-based assessment of financial assistance applications received.



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Both recommendations lend themselves to instructive, informative performance measures for inclusion in TWDB’s budget pattern in the General Appropriations Act (GAA). For example, the agency’s compliance with a new GAA performance measure goal of processing applications and letting funding within a set period of time would enable legislative budget writers to make meaningful assessments of the agency’s performance. With regard to risk-based application reviews, a performance measure here would enable the legislature to gauge the extent to which the agency is engaging higher-risk applicants, including the smaller water systems discussed in Issue 2 of the Sunset Staff Report.

Currently, none of TWDB’s GAA performance measures directly assess the agency’s processing of applications for financial assistance. Generally, TWDB’s performance measures in Article VI of Senate Bill 1 (87R) include responses to requests for certain information, aggregate financial commitments, and, among other strategies and goals, the completion of specific studies and planning activities (see Attachment 1). Missing from the GAA are any key performance measures evaluating the agency’s achievements in processing applications for financial assistance. As the Sunset Staff report correctly observes: “[e]ssentially, TWDB is a large infrastructure bank.” Given this core agency function, TWDB’s key performance measures should be updated to reflect the imperatives of Sunset Staff recommendations 1.1 and 1.2 and, more broadly, the agency’s function as a public financial institution. Texas 2036 recommends the following new management action recommendation to Issue 1 in order to improve tracking of agency achievement in processing applications for financial assistance.

New Management Action 1.4. Direct that Sunset Commission staff, in consultation with TWDB, develop new performance measures for the General Appropriations Act that track agency achievement towards implementing Sunset Staff recommendations 1.1 and 1.2.

As part of this new management action recommendation, Sunset staff would work with TWDB to develop new performance measures for tracking agency achievements towards implementing recommendations 1.1 and 1.2. For example, one new measure could assess how many applications for financial assistance are processed within a designated timeframe. As another example, a new performance measure could assess the total proportion of applications reviewed subject to the risk-based approach for project review described in recommendation 1.2. Sunset staff would present the recommended performance measures to the Sunset Commission for final approval by the Commission before September 1, 2022. Those performance measures adopted by the Commission



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would be provided to the House Appropriations and Senate Finance committees for inclusion in each chamber's base budget bill.

Long term, successful implementation of recommendations 1.1 and 1.2 requires coordination with the appropriations process. TWDB's capacity to release funding, and review applications in a timely manner and on a risk basis hinges on the availability of qualified staff and other resources to perform these functions. This new management recommendation ensures a holistic approach towards implementing staff recommendations 1.1 and 1.2. Making this change in GAA key performance measures enables the legislature to directly assess agency achievement in these specific areas. More critically, this change ensures that appropriations decisions are correlated with desired future conditions described within the Sunset Staff Report for agency processes.

Lastly, this new management action does not require any specific change in TWDB's appropriations. While the recommendation does require that Sunset staff develop performance measures that may be ultimately included in the GAA, it does not necessitate a change in funding levels.

Modifications to Issue 2. Amend management action 2.1 to include data for analysis and authorize, by statute, that TWDB provide technical assistance to disadvantaged communities.

The Sunset Staff report's analysis and discussion in Issue 2 provides a compelling argument for management action recommendation 2.1. That recommendation directs TWDB to collect certain information, including survey data and application reviews, that describe why entities are or are not applying for and receiving TWDB funds. Specific data sets exist, however, that would better inform the analysis required by that recommendation. These include water loss audit data collected by TWDB and health and safety and environmental compliance data compiled by the Texas Commission on Environmental Quality (TCEQ). Underlying the challenges discussed in Issue 2 is the bigger problem of small, rural, and disadvantaged communities lacking the technical assistance resources to apply for TWDB financial assistance programs, including the State Water Implementation Fund for Texas (SWIFT). The following two recommendations aim to address these issues.

Modification to Management Action 2.1. Require that TWDB include water loss audit data and TCEQ compliance data regarding financial assistance applicants.



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This recommendation would modify management action recommendation 2.1 to require that TWDB include water loss audit and TCEQ compliance data as part of the required assessment. These data sets would inform the agency of the genuine water needs of potential applicants, and would hone TWDB's messaging for prospective applicants. For example, water systems with significant water loss ratios should be encouraged to apply for financial assistance to fix their leaking systems. Further, systems with ongoing noncompliance issues with TCEQ health and safety and environmental protection requirements should be encouraged to apply for financial assistance in order to remedy the ongoing problems. Incorporating these two data sets as part of recommendation 2.1 would provide specific, actionable information that would better inform the agency's outreach plan prescribed in recommendation 2.2.

Recommendation 1. Establish a technical assistance outreach program for small, rural, and disadvantaged communities to apply for all TWDB financial assistance programs.

Currently, only the Rural Water Assistance Fund (classified as dormant in Appendix C of the Sunset Staff report) administered by TWDB is authorized by statute to provide technical assistance to eligible applicants. This recommendation would require, by statute, that TWDB establish a technical assistance program for communities that have been traditionally challenged in applying for state financial assistance. As part of this recommendation, TWDB may partner with non-profit organizations to provide assistance to targeted communities. The Infrastructure Investment and Jobs Act of 2021, also known as the Bipartisan Infrastructure Law, authorizes TWDB to use up to two percent of the two State Revolving Funds received for providing technical assistance to rural and small water systems, particularly in disadvantaged communities. This change in TWDB statute would provide the agency with clear authorization to provide technical assistance to qualified communities through each financing program.



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New Issue. Require that the state and regional water planning processes administered by TWDB consider droughts worse than the Drought of Record.

The Drought of Record of the 1950s serves as the North Star for state and regional planning processes. This was the premise for inaugurating the water planning process established by Senate Bill 1 in 1997. While the Drought of Record was undeniably severe, and left a lasting economic impact on Texas, historic evidence reveals that droughts worse than that of the 1950s have affected Texas. Looking at the paleoclimatic

data, Texas has endured more severe “megadroughts” before meteorological record-keeping began in the late 19th century. The article, “Extended Chronology of Drought in South Central, Southeastern, and West Texas,” published in the December 2011 volume of the *Texas Water Journal* documents regional droughts that were longer and/or far more severe than the Drought of Record of the 1950s. Notably longer periods of severe drought occurred in Texas throughout the early 1700s, mid 1800s, and throughout the 1500s (also known as the “Southwestern Megadrought”). More recently, Texas endured the worst one year drought of record in 2011.

While historic records show that Texas endured droughts worse than the Drought of Record, contemporary data points towards more severe droughts in the future. In September 2021, Texas 2036 and the Office of the State Climatologist at Texas A&M University released the report, “An Assessment of Historic and Future Extreme Weather Trends in Texas, 1900-2036.” The report projects that warmer average temperatures and higher rainfall variability will contribute to greater future drought severity. In short: future droughts may be worse than what was observed – and endured – during the Drought of Record of the 1950s.

If the current state and regional water planning process administered by TWDB is premised on providing water supplies during a repeat of the Drought of Record, then the state and regional water plans resulting from these processes may fall short in anticipating real water needs should Texas experience a drought worse than the one in the 1950s. Given historic records and projected trends, TWDB’s water planning framework should be amended to include the consideration of greater drought extremes. Further, TWDB should be encouraged, by statute, to obtain information relating to prospective drought trends. Towards these ends, Texas 2036 offers the following three recommendations as part of this new issue.



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Recommendation 1. Authorize TWDB, by statute, to consult with the Office of the State Climatologist at Texas A&M University on extreme weather trends.



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This recommendation establishes a formal line of communication between TWDB and the Office of the State Climatologist (Office). Authorizing TWDB to consult with the Office would enable the agency to receive updates regarding current and prospective drought trends. In addition, this affiliation would allow TWDB to obtain information relating to rainfall trends that may inform parameters relating to flood planning. There is legislative precedent for authorizing state agencies to consult with the Office of the State



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Climatologist. Senate Bill 3 (87R) requires that both the Railroad Commission and the Public Utility Commission consider the weather predictions produced by the Office for the purposes of weather emergency planning for the state's natural gas supply chain and electrical grid.

Recommendation 2. Require that TWDB, by statute, assess the efficacy of the water strategies identified within the state water plan towards meeting state water demands and/or needs during a drought worse than the Drought of Record.

TWDB's State Water Plan identifies water supplies needed to address demands during a repeat of the Drought of Record. If historic and projected climatic trends point towards droughts more severe than the Drought of Record, then the Plan should include an assessment of how the water supply projects and strategies would work in the face of more extreme drought. This recommendation would require that TWDB include a section in the State Water Plan assessing the overall efficacy of the plan's water supply projects and strategies during droughts that are proportionately greater in terms of severity or duration than the Drought of Record. As part of this recommendation, TWDB should have the flexibility to adopt alternative extreme drought scenarios for the purpose of this section within the State Water Plan. This recommendation ensures that TWDB perform a sensitivity analysis on the extent to which the water supply projects and strategies within a given plan would address water needs during a drought worse than the Drought of Record. This would gauge a given plan's resilience in the face of future extreme droughts.

Recommendation 3. Authorize regional water planning groups, by statute, to use a drought worse than the Drought of Record as the baseline for planning purposes.

TWDB recently adopted a rule authorizing regional water planning groups to adopt a drought worse than the Drought of Record for planning purposes. TWDB deserves credit for this initiative. This recommendation would include the same authorization in Chapter 16 of the Water Code. This change in statute would solidify legislative recognition of droughts worse than the Drought of Record, further encouraging regional water planners to consider greater extremes.

Earlier this year Texas 2036 released the results from our fourth Texas Voter Poll. According to the poll data received, 77% of Texas voters are concerned that Texas will experience more extreme weather events, including more 100-degree days and increased



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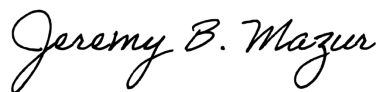


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drought severity, between now and 2036. In addition, nearly nine out of ten Texans are concerned about their access to water during a severe drought. The recommendations offered in this new issue attempt to better position TWDB and the state's water planning process to address the growing concerns about drought felt by a majority of Texas voters.

Thank you for your time and attention to these comments. I welcome the opportunity to discuss these recommendations with your staff in further detail.

Sincerely,



Jeremy B. Mazur
Senior Policy Advisor



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75219