

# SUNSET ADVISORY COMMISSION

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## STAFF REPORT

### Texas Water Development Board State Water Implementation Fund for Texas Advisory Committee

2022-23  
88TH LEGISLATURE



# SUNSET ADVISORY COMMISSION



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*Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood*

**TEXAS WATER DEVELOPMENT BOARD**

**STATE WATER IMPLEMENTATION FUND**

**FOR TEXAS ADVISORY COMMITTEE**

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## HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at [sunset.texas.gov/how-sunset-works](https://www.sunset.texas.gov/how-sunset-works). The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at [sunset.texas.gov](https://www.sunset.texas.gov).

### **CURRENT VERSION: Sunset Staff Report**

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

### **Sunset Staff Report with Commission Decisions**

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

### **Sunset Staff Report with Final Results**

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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# SUMMARY OF SUNSET STAFF REPORT

Few other state agencies have experienced the changes and growth seen by the Texas Water Development Board (TWDB) in the years since its last Sunset review. TWDB now manages twice the number of contracts and over six times the number of active water infrastructure and conservation projects as compared to 2013. To meet the growing water needs of a state expected to double its population over the next 50 years, the Legislature has entrusted TWDB with millions of dollars for new financial assistance programs and overhauled its board. With this changing landscape in mind, the Sunset review found a generally well-run agency that has worked diligently and vigorously to fulfill its new responsibilities. Yet these changes have presented challenges for the agency and going forward TWDB must get back to the basics by ensuring it manages its financial assistance programs as effectively and efficiently as possible.

To manage its financial assistance programs as efficiently as possible, TWDB must get back to the basics.

The amount of money flowing through and activity happening at the agency is staggering — in fiscal year 2021, TWDB committed nearly \$1.8 billion to fund 253 projects. Since TWDB's last Sunset review in 2013, the Legislature passed and voters approved the creation of the State Water Implementation Fund for Texas (SWIFT) funded by a one-time, \$2 billion transfer from the Economic Stabilization Fund, also known as the Rainy Day Fund, to support water supply projects identified in the state water plan. The same legislation changed the board's structure from six at-large and part-time board members to three, full-time members, and created the SWIFT Advisory Committee to provide legislative guidance on the fund's operation, function, and structure. In 2019, in the wake of Hurricane Harvey's devastation, the Legislature again turned to TWDB, tasking it with administering Texas' first regional and state flood planning effort, modeled after the agency's successful water planning process. Similarly to SWIFT, the Legislature passed and voters approved a \$793 million transfer from the Economic Stabilization Fund to fund flood projects to better prepare Texas for the future.

Essentially, TWDB is a large infrastructure bank, providing loans and grants for water supply, water and wastewater treatment, flood control, and agricultural water conservation projects. The agency is generally successful at getting dollars out the door for projects, but the significant increase in responsibilities combined with stagnant staffing levels and outdated technology have challenged TWDB's ability to efficiently administer this key function. While delays in TWDB's project review process have been exacerbated by the COVID-19 pandemic and ongoing supply chain instability, the review found the agency could have done more to proactively address deficiencies in its internal processes. To that end, the review focused on addressing statutory limitations and ensuring TWDB implements existing suggestions and new recommendations in this staff report to improve the efficiency of its process and prevent it from contributing to increased project delays and costs.



To encourage more potential customers to take advantage of funding opportunities, TWDB staff and board members perform workshops, webinars, and technical assistance to get the word out and increase awareness. While important, TWDB has yet to fully realize the potential of these activities by not sufficiently collecting and analyzing data to better inform potential programmatic changes and to best serve Texas communities. Having a more comprehensive and holistic effort toward developing and coordinating outreach activities would benefit TWDB as it continues to work to meet the needs of current and future customers.

Finally, this staff report does not address continuation of the agency because TWDB is constitutionally created and not subject to abolishment under the Sunset Act. However, the SWIFT Advisory Committee is subject to abolishment and the review found the committee is no longer necessary. The committee initially provided valuable oversight and suggestions, but with SWIFT now a mature program, the committee has stopped contributing formal, written recommendations and its annual meetings are relatively routine. Sunset staff found other existing reporting and oversight mechanisms provide sufficient opportunities for the Legislature to continue to guide this important program.

The following material summarizes Sunset staff recommendations on the Texas Water Development Board, and the State Water Implementation Fund for Texas Advisory Committee.

## **Sunset Issues and Recommendations**

### **ISSUE 1**

#### **TWDB's Inefficient Review Process Contributes to Project Delays and Increased Costs.**

TWDB's project review process ensures projects comply with state and federal requirements. The number of new projects TWDB reviews and manages has grown exponentially and outpaced the number of staff it has assigned to this area. As such, TWDB struggles to identify and rein in review delays that ultimately contribute to increasing project costs. The Sunset review identified several concerns related to the project review process, and recommendations would increase efficiency of a key function that must be addressed for the agency to best allocate its limited resources and continue to effectively serve as a large infrastructure bank.

#### **Key Recommendations**

- Require TWDB to develop, collect, and analyze performance metrics and establish goals for evaluating its project review process.
- Authorize TWDB to implement a risk-based approach to project review.
- Direct TWDB to develop a plan to prioritize improving its project review process to eliminate inefficiencies and inconsistencies.



## ISSUE 2

### A More Strategic, Comprehensive Evaluation of Programs and Outreach Efforts Would Benefit TWDB and Entities Eligible for Financial Assistance.

TWDB does not collect and analyze comprehensive information about participation in its financial assistance programs and its outreach efforts, limiting the agency's ability to best serve communities and meet legislative goals. Specifically, the agency does not have a clear idea of what types of entities and projects are and are not applying for and receiving funding and why that is the case. Evaluating how well its financial assistance programs and outreach efforts meet applicant's and potential applicant's needs would allow TWDB to make or recommend adjustments to its programs, communication, technical assistance, application, and funding processes.

#### Key Recommendations

- Direct TWDB to collect and analyze information about its financial assistance applicants and outreach efforts to better inform and more effectively target agency activities.
- Direct TWDB to develop a coordinated outreach plan to more efficiently promote agency programs, improve operations, and ensure its outreach efforts meet entities' needs and expectations.

## ISSUE 3

### TWDB's Outdated Statute and Policies Should Be Updated to Eliminate an Unnecessary Advisory Committee and Reflect Some Standard Elements of Sunset Reviews.

While the SWIFT Advisory Committee initially provided significant guidance and feedback on the program's implementation, Sunset staff determined the committee is no longer necessary for TWDB to successfully administer the program. Additionally, Sunset reviews evaluate a number of standard elements in an agency's statute and management practices, including assessing an agency's reporting requirements and rulemaking. Sunset staff identified several needed changes to TWDB's statute and management practices based on these standard elements that would enhance the agency's effectiveness, efficiency, transparency, and accountability.

#### Key Recommendations

- Abolish the SWIFT Advisory Committee.
- Abolish TWDB's reports on the Water Loan Assistance Program, Water Bond Insurance Program, and Storage Acquisition Fund, and continue all other reporting requirements.

## Fiscal Implication Summary

Overall, these recommendations could be implemented with existing resources and would have no fiscal impact to the state. Some recommendations in the report would require staff time to complete, but should improve internal operations and efficiency in the long term.



# AGENCY AT A GLANCE

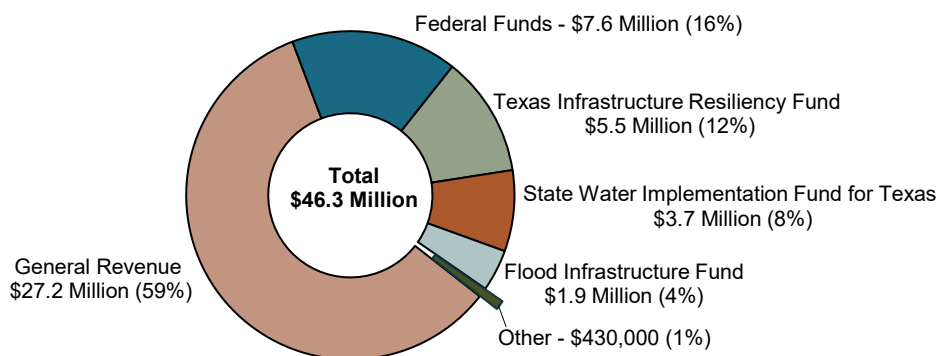
In 1957, Texas' voters approved a constitutional amendment to create the Texas Water Development Board (TWDB) to issue general obligation bonds for the conservation and development of the state's water resources.<sup>1</sup> Since then, the Legislature has expanded TWDB's responsibilities to include planning for severe drought and flood conditions and providing data to inform planning. To accomplish its goals for addressing the state's water needs, TWDB performs the following activities:

- Provides financial assistance in the form of loans and grants through federal and state programs to Texas communities for water supply, water and wastewater treatment, flood control, and agricultural water conservation projects.
- Administers the state's regional water supply and flood planning processes, and prepares the state water plan and state flood plan.
- Studies groundwater and surface water resources, and collects, analyzes, and publishes water-related data used by the regional water supply and flood planning groups, general public, and other state agencies.

## Key Facts

- **Governance.** The governor appoints the full-time, three-member board and designates the board chair. Statute requires one board member to have experience in the field of engineering, one in the field of finance, and one in the field of either law or business.<sup>2</sup> Members serve staggered six-year terms and statute prohibits them from serving more than two terms.<sup>3</sup>
- **Funding.** In fiscal year 2021, TWDB operated on revenues of \$46.3 million. As illustrated in the chart, *TWDB Sources of Revenue*, general revenue and federal funds account for about 75 percent of the agency's revenue.<sup>4</sup> Nearly all remaining revenue comes from funds associated with specific financial assistance programs.

**TWDB Sources of Revenue - FY 2021**



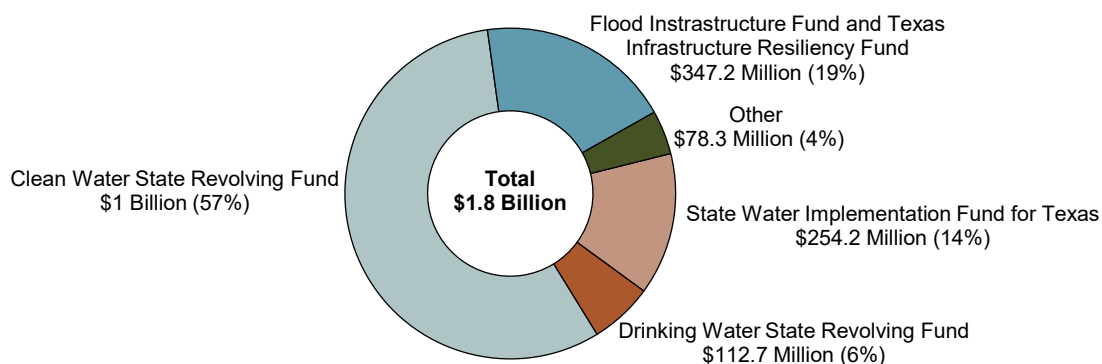
The agency issues general obligation and revenue bonds to support many of its financial assistance programs. In addition to these revenues, the Legislature appropriated TWDB \$263 million in fiscal year 2021 to pay ongoing debt service on certain general obligation water bonds, which funded projects from the Economically Distressed Areas Program, Rural Water Assistance Fund, and Water Infrastructure Fund.

The chart, *TWDB Expenditures*, details the agency's operating expenses in fiscal year 2021. TWDB spent \$14.5 million administering its financial assistance programs and \$12.4 million on water supply and flood planning. Appendix A describes TWDB's use of historically underutilized businesses in purchasing goods and services for fiscal years 2019 to 2021.

- **Staffing.** TWDB employed 359 full-time staff in fiscal year 2021. Nearly 95 percent of TWDB staff work at the agency's headquarters in Austin, with the remainder divided among four regional offices in El Paso, Harlingen, Houston, and Mesquite to provide project review, grant management support, and community outreach. Appendix B compares the percentage of minorities and women in TWDB's workforce to the statewide civilian labor force for the past three fiscal years.
- **Financial assistance programs.** As described in Appendix C, TWDB administers several financial assistance programs to help cities, counties, and other political subdivisions fund the planning, acquisition, design, and construction of water, wastewater, and flood infrastructure projects. Common projects include wastewater treatment plants, raw water pipelines, and drainage infrastructure. The agency also provides grants and loans for environmental research, innovative water technologies, and water conservation efforts.

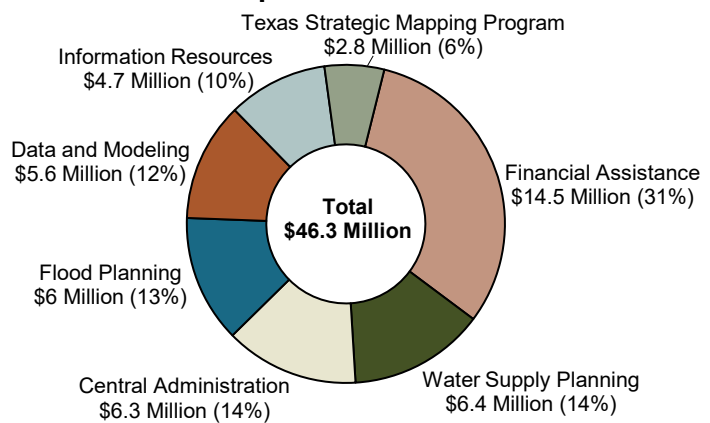
During fiscal year 2021, TWDB committed \$1.79 billion to 168 different entities to fund 253 projects.<sup>5</sup> Other commitments include regional water supply and flood planning grants as well as research grants. The chart, *Grant and Loan Commitments*, shows total commitments approved by the board in fiscal year 2021 by financial assistance program.<sup>6</sup>

**Grant and Loan Commitments - FY 2021**



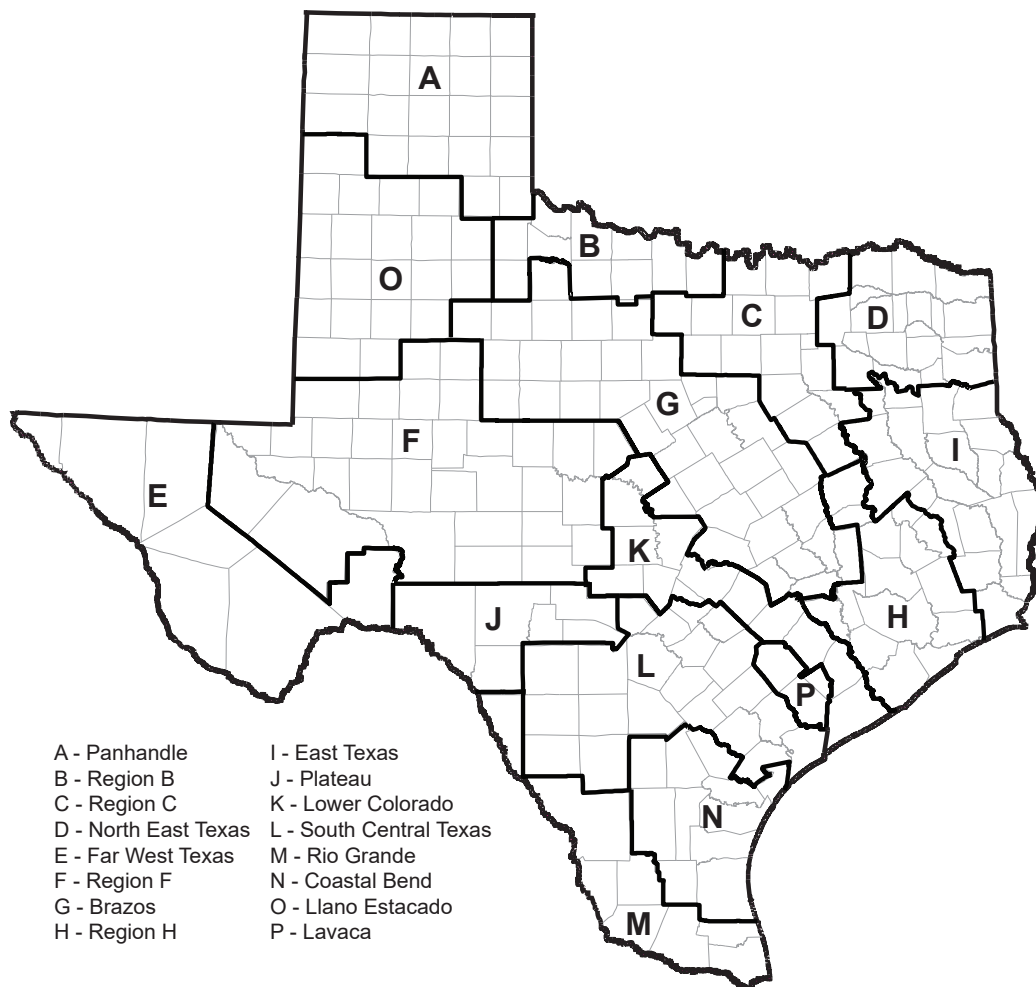
- **Water supply planning.** In July 2021, the board adopted the *2022 State Water Plan*, which outlines how the state will meet future water needs over a 50-year planning horizon. TWDB administers the state's bottom-up water supply planning process. Every five years TWDB incorporates plans from 16 regional water planning groups into a comprehensive state water plan that identifies water supply needs and recommends water management strategies and projects to address those needs.

**TWDB Expenditures - FY 2021**



The *2022 State Water Plan* indicates Texas will need an additional 6.9 million acre-feet of water to meet estimated demands in 2070.<sup>7</sup> The *Regional Water Planning Areas* map illustrates the boundaries of each planning group and Appendix D describes the composition of the groups.

### Regional Water Planning Areas

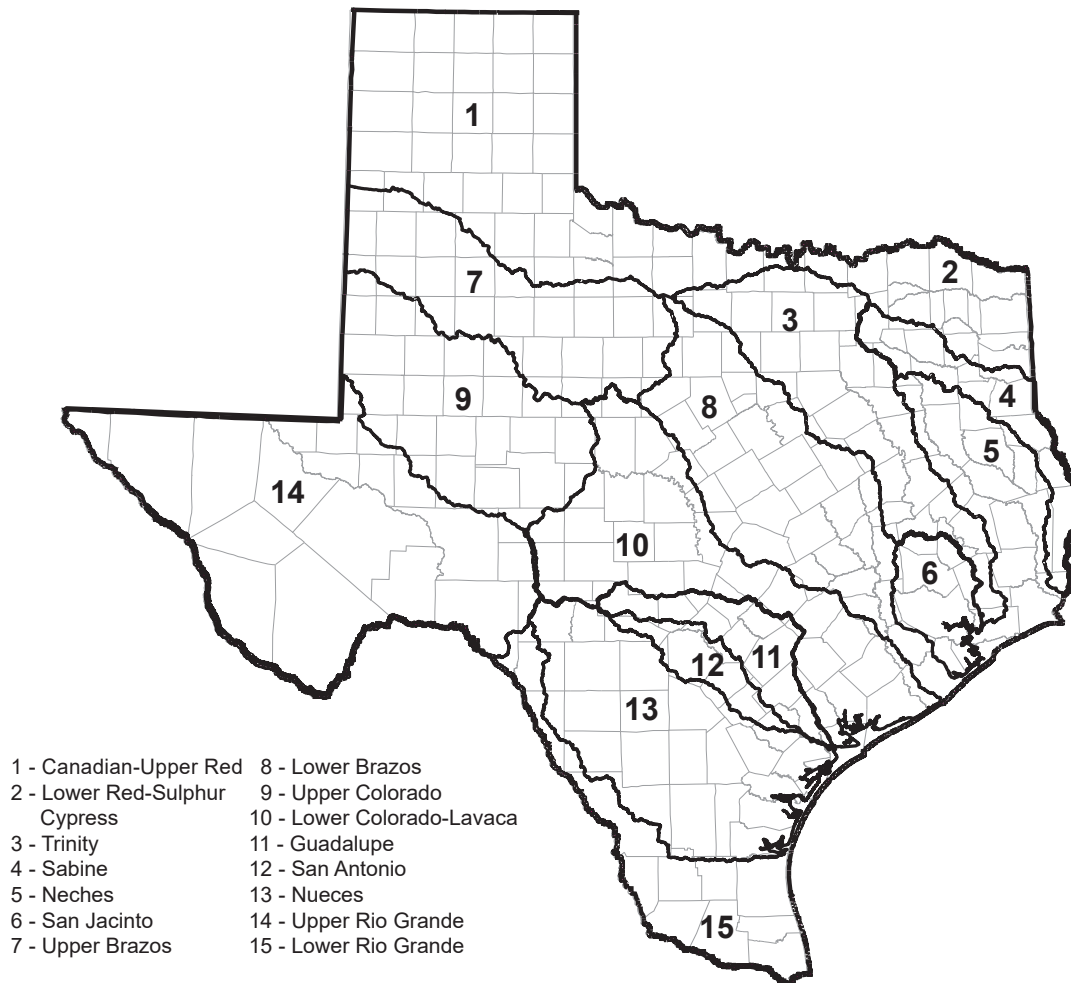


In 2013, voters approved a constitutional amendment to create the State Water Implementation Fund for Texas (SWIFT) and the Legislature authorized a one-time, \$2 billion transfer from the Economic Stabilization Fund, also known as the Rainy Day Fund, to SWIFT to support water supply projects identified in the state water plan.<sup>8</sup> The seven-member SWIFT Advisory Committee provides comments and recommendations to TWDB on the use of the funds. As of fiscal year 2021, TWDB has committed nearly \$9 billion in assistance to political subdivisions and water supply corporations for 86 state water plan projects. For example, SWIFT helped finance a city's water line replacement, an irrigation district's new storage facility, and a regional water provider's treatment plant expansion.

Additionally, nearly 30 percent of recommended water management strategies in the *2022 State Water Plan* call for conservation of existing water supply through demand reduction and increased efficiency. As such, TWDB supports conservation efforts by collecting data, awarding agriculture water conservation grants, collecting municipal water conservation plans and utility water loss audits, and reporting on best water management practices.

- Flood planning.** In 2019, the Legislature charged TWDB with administering a statewide effort to plan for and protect lives and property during flood events. Modeled after the agency's water supply planning process, every five years 15 regional flood planning groups develop flood plans through a stakeholder-driven process. The *Regional Flood Planning Areas* map illustrates the boundaries of each flood planning group and Appendix D describes the composition of the groups. Flood planning groups will submit their first regional plans to TWDB in January 2023 and the agency will publish the first state flood plan in September 2024.

### Regional Flood Planning Areas



Also in 2019, Texas voters approved a constitutional amendment to create the Flood Infrastructure Fund (FIF) and the Legislature authorized a one-time, \$793 million transfer from the Economic Stabilization Fund to FIF to assist in financing flood control, drainage, and mitigation projects.<sup>9</sup> Once the state flood plan has been developed, TWDB will use FIF to help finance projects identified in the plan.<sup>10</sup>

- Groundwater.** TWDB provides technical expertise, data, and modeling tools to inform policymakers and the public on groundwater resources across the state's nine major and 22 minor aquifers. As part of the agency's goal to provide accurate, objective information to support the conservation and development of groundwater, TWDB collects water level and water quality data, maintains water well

databases, develops regional aquifer flow models, and maps and characterizes brackish groundwater resources. The agency also provides technical assistance for the joint groundwater planning process, in which groundwater conservation districts collectively plan for future aquifer conditions. Appendix D describes the key entities involved in the groundwater planning process.

- **Surface water.** To support water and flood planning and management, TWDB collects data, develops models, and analyzes the state's streams, rivers, lakes, bays, and estuaries. The agency studies and attempts to better understand factors that influence surface water, including evaporation rates and sedimentation effects at reservoirs to inform reservoir management and storage capacity. Additionally, TWDB manages the TexMesonet statewide observation network, consisting of over 1,500 weather stations and rain gauges, for flood and drought monitoring.
- **Texas Natural Resources Information System (TNRIS).** TWDB administers TNRIS, the state's centralized repository for geographic data with responsibility for the acquisition, maintenance, and distribution of geospatial information for public use. Through its Texas Strategic Mapping Program, TNRIS produces high-quality digital maps documenting features such as elevation, geology, land parcels, and address points to assist users of geographic information, including emergency responders and the public.

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<sup>1</sup> Section 49-c, Article III, Texas Constitution.

<sup>2</sup> All citations to Texas statutes are as they appear on <http://statutes.legis.texas.gov/>. Section 6.052(a), Texas Water Code.

<sup>3</sup> Section 6.056, Texas Water Code.

<sup>4</sup> Other includes appropriated receipts, interagency contracts, and the Water Assistance Fund's Hydro Survey wherein the agency conducts fee-based volumetric surveys of lakes.

<sup>5</sup> The agency also administers the Federal Emergency Management Agency's Flood Mitigation Assistance Program for Texas and awarded \$44.3 million in pass-through funding to eligible entities in fiscal year 2021.

<sup>6</sup> Other is composed of commitments from the Water Development Fund (\$43 million), regional water supply and flood planning grants (\$22.2 million), research grants (\$8.6 million), Water Infrastructure Improvements for the Nation (\$3.3 million), and Agricultural Water Conservation Fund (\$1.2 million).

<sup>7</sup> Texas Water Development Board, *2022 State Water Plan*, 2021, p. A-3, accessed online February 22, 2022, <https://www.twdb.texas.gov/waterplanning/swp/2022/index.asp>.

<sup>8</sup> Section 49-d-12, Article III, Texas Constitution.

<sup>9</sup> Section 49-d-14, Article III, Texas Constitution.

<sup>10</sup> Section 15.5341, Texas Water Code.





# ISSUE 1

## TWDB's Inefficient Review Process Contributes to Project Delays and Increased Costs.

### Background

The Texas Water Development Board (TWDB) provides financial assistance in the form of loans and grants through several federal and state programs, detailed in Appendix C, for water supply, water and wastewater treatment, flood control, and agricultural water conservation projects. Eligible applicants, such as a city or public water utility, apply to TWDB to fund new systems or improve existing systems. Once TWDB commits funding to a project, its project review staff evaluate the customer's project documents, listed in the accompanying textbox, for compliance with programmatic and design requirements. Programmatic requirements, such as using domestic iron and steel for federally funded projects, vary by financial assistance program.<sup>1</sup> These requirements also include an environmental review to determine the project's environmental impacts and any special conditions necessary to mitigate these impacts. The Texas Commission on Environmental Quality's (TCEQ) rules specify design requirements.<sup>2</sup> Appendix E contains more detail on the TWDB application and project review processes.

TWDB's staff review and approve project documents before the agency releases funds for any given stage of the project. TWDB assigns each project to one of seven teams. Each three- to seven-member team includes a manager, one or more engineering reviewers, an environmental reviewer, a financial analyst, and administrative staff. TWDB uses TxWise, a software system originally designed for reporting federal program data to the U.S. Environmental Protection Agency (EPA), to manage its projects across all financial assistance programs.<sup>3</sup>

#### Project Documents

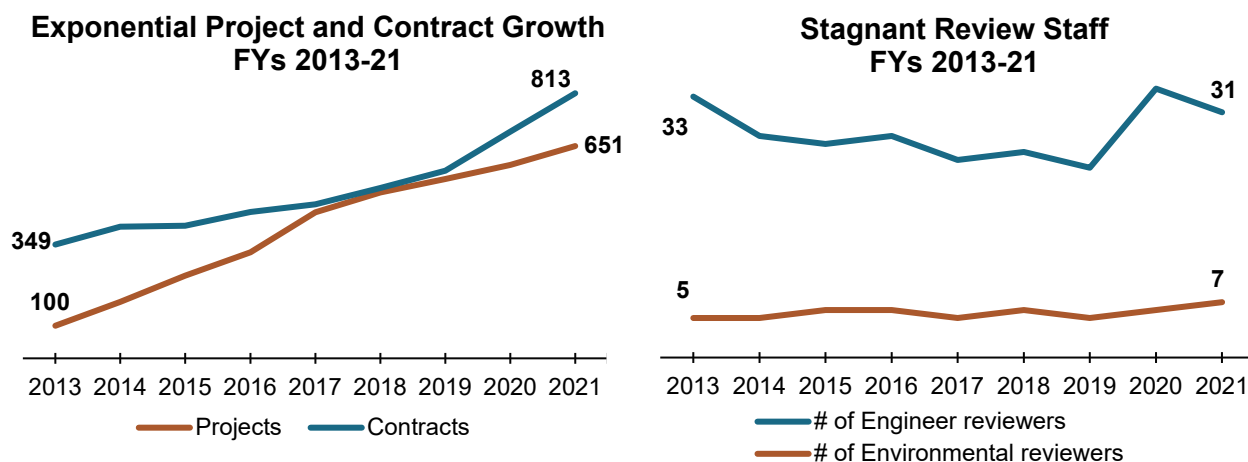
- **Engineering feasibility report:** results from a study on the viability of a project, which may also include design calculations.
- **Plans and specifications:** set of construction contract documents that include detailed drawings of a project's design and performance standards for work, materials, and manufactured products.
- **Bid documents:** set of documents that inform contractors of the scope of work expected, which includes plans and specifications, any special conditions, and price and completion schedules for the project.
- **Outlay reports:** set of documents that describe project expenditures on a monthly basis, used to request funds disbursement.
- **Change orders:** documents describing any alteration to the original scope of work.

### Findings

#### **TWDB faces increasing demand for its funding but has not proactively addressed its inefficient project review process.**

The number of new projects TWDB manages has grown exponentially since the establishment of the State Water Implementation Fund for Texas (SWIFT) in 2013 and the Flood Infrastructure Fund (FIF) in 2019. This project growth has far outpaced the number of staff TWDB has to effectively manage these projects. As shown in the charts on the next page, TWDB currently manages about 500 more active projects and contracts per year, while the number of

staff reviewers has remained flat, largely due to the agency's struggle to replace engineers in today's extremely competitive job market.



While TWDB could not have predicted the Legislature's actions to entrust it with new responsibilities and millions of dollars in funding for new programs, especially in such a relatively short timeframe, it should have proactively addressed deficiencies in its internal processes, particularly for its most important function — administering its financial assistance programs — before customers began complaining.

TWDB has struggled to keep pace with new responsibilities and funding for new programs.

During the COVID-19 pandemic, TWDB began receiving complaints that its project reviews and approvals were taking too long, contributing to cost overruns. At that point TWDB realized it had a serious workload issue and that TxWise was no longer serving its growing needs. In an attempt to fully diagnose the problem, TWDB hired Freese and Nichols, a private engineering firm, to study its project review process, identify bottlenecks and inefficiencies, and make recommendations for improvements.<sup>4</sup> In 2021, Freese and Nichols submitted its report to the board, including several recommendations to address project review and approval delays.<sup>5</sup> TWDB prioritized the recommendation to acquire project management tools missing from TxWise and was actively pursuing acquiring them during the Sunset review. While TWDB has taken some steps to reduce staff workload, overall the review found TWDB has been slow to implement other recommendations in the Freese and Nichols report, including making a plan to address identified deficiencies.<sup>6</sup>

As Texas' population continues to grow, demand for TWDB's financial assistance programs is unlikely to decline, especially as the agency prepares to commit millions of dollars in new federal funding from the Infrastructure Investment and Jobs Act.<sup>7</sup> However, TWDB's project review process is not meeting customer expectations and cannot do so until TWDB addresses current issues and better prepares for the future. Ultimately, as discussed below, statutory limitations, problematic internal policies, and an overall lack of proactive management have resulted in an inefficient project review process in serious need of improvement.

## TWDB lacks performance metrics and goals necessary to effectively manage and oversee its project review process.

Without established goals and metrics, TWDB cannot identify bottlenecks in its project review process or quantify delays at each stage, limiting staff's ability to effectively manage the process and the board's ability to oversee it. Currently, the agency largely measures its success by the number and value of its financial commitments. Other than committing funds for projects, the agency's most important responsibility is ensuring the funded projects are completed. However, the agency has not established metrics to capture data on how the review process is working or set goals to evaluate its efficiency. The *Missing Metrics* textbox details performance metrics the agency does not track and some potential impacts on its customers.

### Missing Metrics

- **Document intake.** TWDB does not track the delay caused by a customer submitting multiple intake documents in a piecemeal fashion over the course of weeks or months. Customers often expect the review to begin as soon as they submit their first project document but may not realize the information is incomplete, requiring additional submissions. Current intake procedures include entering a receipt date for the initial project document, but TxWise cannot record more than one receipt date, making TxWise reports unreliable for tracking a project's actual review and approval timeframe.
- **Review start.** TWDB does not track the delay caused by a reviewer not starting the review immediately on receipt of a complete document. TxWise does not provide automatic task reminders and TWDB is wholly reliant on a reviewer managing their workload outside of TxWise. Stakeholders report reviewers sometimes lose track of documents routed to them for review. On at least one occasion, review of a project began almost three months after receipt of the complete document.
- **Environmental review.** TWDB does not track the time it takes to complete an environmental review, but stakeholders report up to six-month delays. Since TWDB coordinates with other state and federal regulatory agencies that review project compliance with various regulations, whether the delay results from TWDB's role in the review or another agency's is unclear, but TWDB is unable to identify and track this metric regardless.
- **Bid review.** TWDB does not track the time it takes to complete bid document review. Bids include an agreed-upon price for labor and materials that are good for 30 to 90 days, but stakeholders reported bid document review takes as long as four to six months, practically guaranteeing the bid will need to be renegotiated as material prices change with time and affect cost estimates.
- **Outlay review.** Once construction begins, TWDB requires contractors to submit monthly outlay reports that show the project's expenditures. Some projects use outlay reports to request disbursement of funds from an escrow account or on an installment basis, depending on the financial assistance program's requirements. Stakeholders report that outlay review currently takes up to two to four months, but the agency does not track these timelines.

During the review, Sunset staff heard about many customers experiencing delays with project review. While some delays may be attributed to other agencies involved in the project review process or customers' own actions, such as submitting incomplete documents, TWDB does not collect or analyze the information necessary to evaluate customer experiences in this area and address common concerns. Delays from six to 12 months cause projects to fall behind schedule and help drive up costs by as much as 25 percent due to rising construction prices, exacerbated by inflation and supply chain instability. As cost overruns occur, some entities must apply for additional financial assistance

Delays cause projects to fall behind schedule and help drive up costs.

TWDB tends to be reactive in responding to customer complaints instead of addressing problems proactively.

such as loans to cover the difference, which reduces the purchasing power of TWDB's funds for future borrowers and passes additional costs on to Texans who ultimately repay the project's loans. TWDB's customers also reported experiencing a two- to four-month delay to receive already committed funds held in escrow, which previously took just 10 to 20 days. Without the timely release of funds, some contractors must cover payments to subcontractors and others to avoid stop-work orders or paying a fee to restart work. In one case, a customer reported having to take out a loan for millions of dollars to cover project costs while waiting months for TWDB to release funds.

The lack of performance metrics also affects the agency and its operations. Without a full and accurate understanding of the cause of delays affecting the review process, TWDB cannot deploy fully informed solutions, such as adjusting staff workload, modifying project review steps, updating guidance for staff and customers, or providing more training. As a result, the agency tends to be reactive in responding to individual customers instead of holistically identifying and addressing problems proactively by making more informed decisions to best allocate its limited staff and resources.

#### **TxWise Deficiencies**

Originally developed with the EPA's needs in mind as a contract management tool, TxWise lacks the ability to track a project's progression through the review process, lacks any notification service when critical milestones have not been met, and cannot provide any meaningful project status reports.

Despite the Freese and Nichols report noting key performance indicators and strategic objectives are necessary to measure progress toward improving productivity to meet increased demands, the agency is waiting until it obtains new project management software to implement the recommendation.<sup>8</sup> Admittedly, TxWise creates significant hurdles in TWDB's ability to manage projects and collect performance metrics, as noted in the accompanying textbox. However, as a large water infrastructure bank, TWDB should be thinking and acting more proactively to ensure it can effectively manage the growing demand for its services.

#### **Statute does not authorize a risk-based approach to project review for better resource allocation and elimination of delays.**

In practice, TWDB's project reviewers often duplicate the efforts of project design engineers.

TWDB lacks explicit statutory authority to review certain project documents based on risk criteria. TWDB reviews all projects for compliance with programmatic requirements and shares responsibility with TCEQ for reviewing and approving project plans and specifications for compliance with state design criteria.<sup>9</sup> However, for the plans and specifications TWDB reviews, statute does not indicate what level of design review TWDB should perform and in practice, agency staff often duplicate the efforts of its customers' licensed engineers. By law, the plans and specifications customers submit to TWDB must be sealed by a licensed engineer affirming the documents are consistent with and conform to industry design and construction standards, limiting the need for TWDB to always do an in-depth design review of its own.<sup>10</sup>

Some engineering firms, like those typically involved in multi-million dollar water infrastructure projects in major metropolitan areas, are staffed with a large number of licensed engineers familiar with TWDB's requirements. Even though TWDB has not formally tracked the results of its reviews, the agency

acknowledges the low likelihood of a single TWDB reviewer catching technical inaccuracies and non-compliance of project design documents produced by such a team of engineers. Meanwhile, other engineering firms working on smaller projects in more rural areas of the state may lack prior experience with TWDB's programs, making submission of non-compliant documents more likely and more in need of a thorough review by agency staff.

Further, during the Sunset review customers expressed frustration, and the agency admitted, that some TWDB licensed engineers go beyond verifying compliance with state design criteria to judging the appropriateness of certain technical components of a project, delaying project approval. While making suggestions beyond those necessary to comply with state design criteria is generally not TWDB's role, in its desire for quality projects, agency staff may find some engineering firms need additional guidance to ensure a successful project. By authorizing risk-based plans and specifications reviews the agency could better allocate its resources to focus on the highest risk customers and projects, which would help reduce its backlog while still protecting the state's financial investment.

Risk-based reviews would help reduce the backlog while still protecting the state's financial investment.

### **Outdated and unnecessary policies and procedures contribute to inefficiencies that negatively impact customers.**

- **Outdated project delivery rules.** Having up-to-date rules helps guide agency functions and provides clarity as to how an agency will implement certain statutory provisions. TWDB's project review rules predate state law authorizing alternative project delivery methods and its internal policies may negate potential cost savings these delivery methods can offer.<sup>11</sup>

Statute authorizes governmental entities to use methods other than the traditional design-bid-build method when contracting for certain public works projects, including the types of water infrastructure projects TWDB funds.<sup>12</sup> While customers may use several alternative delivery methods, one has proven problematic for TWDB — the construction manager-at-risk (CMAR) method. As described in the accompanying textbox, CMAR emphasizes collaboration between the design engineer and construction manager and, depending on the project, may help control project costs.<sup>13</sup> However, TWDB's rules still presume a project is using the traditional design-bid-build method, conflicting with statute's allowance for alternative methods.

#### **CMAR vs. Design-Bid-Build**

In the traditional design-bid-build delivery method, the design engineer completes the project's design before the construction is bid out, meaning the construction manager has no role in the project's design.

In the CMAR method, the design engineer collaborates with the construction manager on project design, using construction expertise to adjust the design as needed. This collaboration can improve cost certainty as construction is completed closer in time to an agreed upon price schedule.

In lieu of updating its rules, TWDB published alternative delivery guidance in October 2020 to help guide agency staff reviewing projects using this delivery method and inform customers of what to expect.<sup>14</sup> Although TWDB sought feedback from some customers and other stakeholders about the guidance, the board did not formally approve the guidance in



a public meeting. As discussed in more detail in the *Problematic CMAR Guidance* textbox, the guidance ultimately resulted in extra work for agency staff and extended processes that TWDB admits can slow down approvals.<sup>15</sup> Using the more formal rulemaking process would have allowed for more input from needed experts and all interested stakeholders, as well as robust and transparent discussion among board members about benefits and challenges of alternative delivery methods across all of the agency's financial assistance programs.

### Problematic CMAR Guidance

TWDB staff review a single set of design and bid documents for traditional delivery projects, but review multiple sets of such documents for CMAR projects. CMAR projects can be divided into several components, each described by a separate set of design and bid documents. Since components are submitted to TWDB for review before the full design is complete for CMAR projects, TWDB staff review each separate set of documents for compliance with programmatic and design requirements. This approach increases staff workload, especially considering CMAR projects can have as many as 30 sets of documents reviewed by staff, compared to a single set for traditional delivery projects.

Using non-licensed reviewers could help alleviate hiring struggles.

- **Unnecessary biddability and constructability review.** The Freese and Nichols report noted a biddability and constructability review is not required by state or federal law, yet TWDB continues to conduct these reviews.<sup>16</sup> The intent of this type of review is to ensure project plans and specifications are sufficiently clear and detailed enough to achieve competitive bids. However, the burden for performing a biddability and constructability review is already on the customer's licensed engineer who seals the plans and specifications, as required by statute, to affirm they are consistent with and conform to current industry design and construction standards, making TWDB's review unnecessarily duplicative.<sup>17</sup>
- **Inefficient use of resources.** As previously discussed, TWDB's project review is largely a compliance check to ensure the project meets programmatic requirements and state design criteria. Although state engineering regulations do not require a licensed engineer to conduct such a compliance review, TWDB still requires a licensed engineer to sign the approval stamp placed on project design documents, an inefficient use of resources especially as the agency struggles to find qualified engineers.<sup>18</sup> While TWDB has attempted involving non-licensed reviewers, the agency is aware its licensed reviewers often recheck any work they personally did not perform, creating a duplicative process. Further, TWDB retains licensed reviewers on its review teams as a risk mitigation effort, but is using them to conduct what should be an administrative process. Expanding the use of non-licensed reviewers could alleviate some of the agency's hiring struggles by avoiding the need for so many licensed reviewers in today's very competitive engineering job market.
- **Outdated training.** TWDB's internal training policies are out of date and inconsistent across review teams, frustrating customers who report getting inconsistent project review requirement information from staff and risking loss of institutional knowledge when experienced staff leave.



While the agency is trying to hire a training coordinator, it has not had a concerted training effort for years and continues to rely on senior engineers to provide ad hoc training on topics of interest. Due to the current workload demands on staff, TWDB recently contracted with the University of Texas at Arlington to develop guidance for several of its financial assistance programs, but this guidance is directed to the agency's customers, not staff. Having well-documented project review policies and procedures is especially important for an agency struggling with staff turnover in critical positions, where a lack of project reviewers can slow or even paralyze operations, delaying needed projects from being built.

## **Sunset Staff Recommendations**

### ***Change in Statute***

#### **1.1 Require TWDB to develop, collect, and analyze performance metrics and establish goals for evaluating its project review process.**

Under this recommendation, TWDB would establish key performance metrics for the project review process and analyze them to identify relevant trends in each review stage, such as intake processing times, review start delays, or funding release times. This recommendation would also require the agency to establish performance goals for the project review process and use the metrics to measure progress toward the goals. Staff should regularly report on the metrics and progression toward goals to the board to ensure ongoing oversight of a key agency function.

This recommendation would also include a management action directing TWDB to publish its performance goals on the agency's website to inform and establish clear expectations for its financial assistance customers. TWDB should set realistic goals for completing review work considering existing resources, staff workload, project complexity, and any other relevant factors. Having robust performance metrics and goals will help TWDB identify problems in its project review process and make informed decisions on resource allocation and program operations to address those problems and increase efficiencies.

#### **1.2 Authorize TWDB to implement a risk-based approach to project review.**

This recommendation would authorize TWDB to conduct risk-based project reviews and develop rules to formally guide the level of scrutiny for project reviews based on risk to the public and TWDB's financial standing. While programmatic review would continue to be required for all projects, TWDB could choose to engage in scaled-back or extended design review, as needed. As a management action, the agency's memorandum of understanding and letter of agreement with TCEQ should be updated to reflect the risk-based approach to design review.

As part of this recommendation, the board could consider recent complaints about or the enforcement history of the project's licensed engineer, previous agency experience with the customer or project's licensed engineer, local concerns or negative media attention regarding the project, or other indications of increased risks. TWDB should balance a project's level of review with the agency's interest in funding a project that will ultimately provide safe water for Texans and successfully repay TWDB loans. A risk-based approach would allow staff to provide appropriate customer service to those projects at higher risk while also minimizing review time for lower risk projects.

## **Management Action**

### **1.3 Direct TWDB to develop a plan to prioritize improving its project review process to eliminate inefficiencies and inconsistencies.**

This recommendation would direct staff, in consultation with the agency's full-time board, to develop a plan to address problems in the agency's project review process, including establishing timelines and discrete tasks to achieve improvements. Although TWDB has taken steps toward obtaining a true project management system, the agency may need additional resources from the Legislature to procure that system and should not overlook other important changes in the meantime. In developing this plan, TWDB should:

- Review and reconsider the Freese and Nichols recommendations to reduce staff workload and identify steps that can be taken immediately, such as potentially eliminating biddability and constructability reviews.
- Identify policies, training manuals, external guidance, and other documents that need to be updated to reflect changes associated with any new project management system the agency procures.
- Identify areas where stakeholder input may be useful or needed before making changes to the project review process, such as developing guidance and rules for highly technical areas like alternative delivery methods.
- Identify any statutory barriers to improvements and whether the agency will need additional resources. The agency could include any necessary statutory recommendations in its *Biennial Legislative Priorities Report* it submits to the governor and Legislature and additional resource needs in its next Legislative Appropriations Request.

Staff should submit the plan to the board for approval by December 31, 2022, and also provide a copy to the Sunset Commission and applicable legislative oversight committees. This recommendation would help streamline the project review process, prepare for changes anticipated by the new project management system, and better position the agency to handle an increasing project workload in coming years.

## **Fiscal Implication**

These recommendations could be implemented with existing resources and would have no fiscal impact to the state. Any costs associated with implementing the plan required under Recommendation 1.3 cannot be estimated at this time.

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- <sup>1</sup> 42 U.S. Code Section 300j-12(a)(4).
- <sup>2</sup> 30 Texas Administrative Code, Part 1, Chapter 217 (Texas Commission on Environmental Quality, *Design Criteria for Domestic Wastewater Systems*); 30 Texas Administrative Code, Part 1, Chapter 290, Subchapter D (Texas Commission on Environmental Quality, *Rules and Regulations for Public Water Systems*).
- <sup>3</sup> Freese and Nichols, *Assessment of Texas Water Development Board Engineering Review Procedures with Respect to Existing Guidance and Regulations of Appropriate Entities*, 2021, accessed online February 21, 2022, [https://www.twdb.texas.gov/publications/reports/contracted\\_reports/doc/2021602444-Assessment-of-TWDB-Engineering-Review.pdf](https://www.twdb.texas.gov/publications/reports/contracted_reports/doc/2021602444-Assessment-of-TWDB-Engineering-Review.pdf).
- <sup>4</sup> Ibid., p. ES-1.
- <sup>5</sup> Ibid., pp. 26-37.
- <sup>6</sup> Ibid., pp. ES-7-ES-8.
- <sup>7</sup> Infrastructure Investment and Jobs Act of 2021, Pub. L. No. 117-58, 135 Stat. 429 (2021).
- <sup>8</sup> Freese and Nichols, *Assessment*, pp. 34-35.
- <sup>9</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 17.276(d), Texas Water Code; 31 Texas Administrative Code, Part 10, Chapter 354, Section 354.3 (1999) (Texas Water Development Board, *Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission*); 31 Texas Administrative Code, Part 10, Chapter 354, Section 354.5 (2016) (Texas Water Development Board, *Letter of Agreement Between Texas Water Development Board and Texas Commission on Environmental Quality*).
- <sup>10</sup> Section 17.183(b), Texas Water Code.
- <sup>11</sup> 31 Texas Administrative Code, Part 10, Chapter 363, Subchapter A, Division 4, Section 363.41 (2021) (Texas Water Development Board, *Engineering Design Approvals*).
- <sup>12</sup> Chapter 2269, Texas Government Code.
- <sup>13</sup> Ibid. at Subchapter F.
- <sup>14</sup> Texas Water Development Board, *Guidance for Use of Construction Manager at Risk and Design-Build Project Delivery Methods*, publication no. TWDB-0570, 2020, accessed online February 25, 2022, <http://www.twdb.texas.gov/financial/instructions/doc/twdb-0570.pdf>.
- <sup>15</sup> Ibid., pp. 20-22.
- <sup>16</sup> Freese and Nichols, *Assessment*, pp. 30-31.
- <sup>17</sup> Ibid.; Section 17.183(b), Texas Water Code; 22 Texas Administrative Code, Part 6, Chapter 137, Subchapter C, Section 137.63(b)(1) (2020) (Texas Board of Professional Engineers and Land Surveyors, *Engineers' Responsibility to the Profession*).
- <sup>18</sup> 22 Texas Administrative Code, Part 6, Chapter 137, Subchapter B, Section 137.33(h) (2016) (Texas Board of Professional Engineers and Land Surveyors, *Sealing Procedures*).



## ISSUE 2

# A More Strategic, Comprehensive Evaluation of Programs and Outreach Efforts Would Benefit TWDB and Entities Eligible for Financial Assistance.

## Background

The Texas Water Development Board (TWDB) administers several programs that provide financial assistance for water supply, water conservation, water and wastewater treatment, and flood control projects. Most of this financial assistance goes to political subdivisions through loans and grants. In fiscal year 2021, TWDB committed nearly \$1.8 billion to 168 different entities to fund 253 projects. The accompanying textbox describes three of the agency's largest financial assistance programs and Appendix C provides more detail on all the programs.

The agency structures its financial assistance programs to meet objectives and requirements established in federal and state law, and board rules and policies. Funded projects are diverse in breadth and scale. For example, in 2021, TWDB awarded a water control and improvement district \$2 million in financing through the Clean Water State Revolving Fund (CWSRF) to plan, design, and implement improvements to its wastewater treatment plant's aging pipe system, which serves about 3,600 residents. The same year, TWDB awarded a utility authority \$194.4 million in financing through the State Water Implementation Fund for Texas (SWIFT) to meet increasing water demands in the rapidly growing central Texas region with new water treatment and distribution infrastructure.

To educate eligible entities on available financial assistance opportunities and to raise the profile of the agency, TWDB staff and board members perform outreach through in-person workshops, webinars, one-on-one technical assistance, and internet resources. Currently, TWDB has two staff positions, one of which is currently vacant, dedicated to financial assistance program outreach, and other agency staff perform outreach informally. Outreach staff give an average of 12 financial assistance presentations annually. Prior to the COVID-19 pandemic, TWDB held presentations and workshops across the state to better reach a diverse audience. From 2020 through 2021, board members engaged in approximately 600 outreach activities, which included outreach on financial assistance programs and the water and flood planning processes, and attending job fairs to attract applicants.

### Select Financial Assistance Programs

- **Clean Water State Revolving Fund (CWSRF):** facilitates compliance with the water pollution control requirements of the federal Clean Water Act.
- **Drinking Water State Revolving Fund (DWSRF):** facilitates compliance with drinking water standards and furthers the health objectives of the federal Safe Drinking Water Act.
- **State Water Implementation Fund for Texas (SWIFT):** finances water conservation and water supply projects listed in the state water plan.

## Findings

### **TWDB does not collect and use data and other information needed to improve, update, and adjust its financial assistance programs.**

From 2017 to 2021, TWDB successfully committed between \$830 million and \$3.3 billion annually to support water and flood projects across the state, while closely monitoring and proactively managing the financial health of its funds. However, TWDB does not collect and analyze comprehensive information about its financial programs to inform and improve the efficiency and effectiveness of its programs and internal processes, limiting the agency's ability to best serve Texas communities and meet legislative goals.

TWDB has not comprehensively evaluated why it fell short of statutory goals.

- **Unmet SWIFT goals.** The Legislature established aspirational goals to direct SWIFT funds to rural entities and certain types of projects. Statute directs TWDB to strive to channel at least 10 percent of funds to rural communities or agricultural conservation projects, and at least 20 percent to projects designed for water conservation or reuse over the five-year period aligning with the adoption of a new state water plan.<sup>1</sup> TWDB fell short of these goals for the *2017 State Water Plan* funding cycles (2016-20), as shown in the chart below. While TWDB has raised the SWIFT interest rate subsidy to 50 percent, the highest allowable by law, the agency has not comprehensively evaluated why these types of entities and projects are receiving such a small share of funding. Without this analysis, the agency cannot make fully informed decisions on how to direct limited funding to best meet the Legislature's objectives.

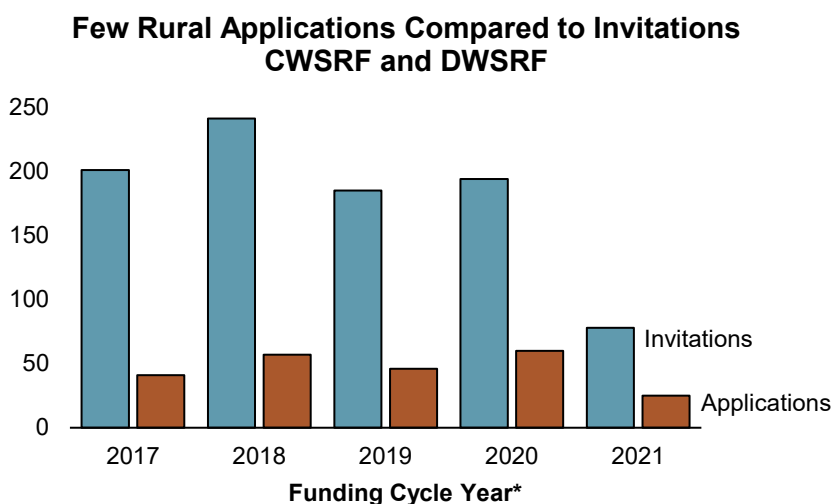
**Unmet SWIFT Funding Goals**

Project/Entity Type*	Percent of Total Funds Closed	Goal
Water reuse	3.63%	20%
Water conservation	3.44%	
Rural	0.17%	10%
Agricultural water conservation	0.12%	

\* Categories are non-exclusive; a single project/entity may belong to more than one group.

- **Unfinished applications from rural entities.** In two of the agency's largest financial assistance programs — DWSRF and CWSRF — entities submit an initial application, which TWDB uses to determine their project's eligibility for financial assistance and prioritize projects according to program objectives and the agency's available lending capacity.<sup>2</sup> The agency encourages entities to submit an initial application form, which allows, but does not obligate, them to participate in the funding cycle, as described in Appendix E. If funds are available for a prioritized project, TWDB invites the entity to submit the more comprehensive, full application.

Many entities TWDB invites to submit the full application never do so, and the agency has not comprehensively collected or analyzed information to understand what types of entities are and are not following through or why. For example, less than 35 percent of invited rural projects chose to submit the required full application, as shown in the chart below. However, the agency compiled this data in direct response to a Sunset staff request for the information and analysis.



\* Funding cycle year corresponds to TWDB's Intended Use Plans, which are required by federal law and describe how the agency will use the program funds. Because of the programs' structures, TWDB is still accepting applications associated with 2021.

Anecdotally, the agency hears from entities that a number of factors contribute to their decision not to submit a full application, such as the lack of sufficient grant funds, concerns about having to raise rates to finance infrastructure investments, a lack of technical expertise, or timing issues. For the 2022 funding cycle, TWDB began formally requesting feedback from applicants who declined the invitation to apply to better understand their reasons for doing so. However, as a new process Sunset staff was unable to evaluate how the agency is tracking and using the information it receives. Collecting more information and thoroughly analyzing it may demonstrate which challenges are more prevalent than others for certain types of entities. To the extent allowable by federal and state requirements, the agency may consider making adjustments to the definition of certain funding criteria, the amount of additional subsidization provided, or the types of projects for which funds have been reserved or set-aside.

While TWDB conducts a biennial customer service survey covering its financial assistance, planning, and science operations, the survey is very broad and does not include questions that would assist the agency in evaluating how well its financial assistance programs meet an applicant's or potential applicant's needs. For example, the survey does not ask why initial applicants elected not to submit a full application, what elements of the application were most challenging, or how effectively agency staff communicated the timing of the financial assistance process, among other questions that could provide greater

Many potential rural applicants only partially complete the funding application process.

TWDB's customer service survey is missing valuable questions.



insight into the applicant's or potential applicant's experience and common barriers they face.<sup>3</sup> The results of this analysis would allow the agency to make or recommend adjustments to its process to encourage more participation in its financial assistance programs, particularly in rural areas.

**TWDB's outreach efforts lack a strategic, coordinated approach to best allocate resources and meet customers' expectations.**

- **Uncoordinated outreach planning activities.** Agency board members, outreach staff, and communications staff share responsibility for promoting the agency and its programs, but coordination among these groups is often informal and reactive, rather than based on a strategic approach to meeting overarching, agency-wide goals. For example, a board member traveling to a ribbon-cutting ceremony may or may not coordinate with staff regarding any strategic messaging or outreach needs near the event the board member could address. While board member outreach is beneficial, a better approach would be for the agency to identify outreach needs, based on the type of analysis discussed above, and strategically coordinate efforts and potential travel. Better planning and coordination of outreach efforts would help the agency more efficiently use its limited staff and resources.
- **Limited targeted outreach efforts.** According to the Texas Commission on Environmental Quality (TCEQ), 84 percent of Texas' public water systems serve a population of less than 3,300.<sup>4</sup> These small systems have an outsized number of enforcement citations for noncompliance with state and federal drinking water standards, making up 92 percent of all public water systems with violations in fiscal year 2021.<sup>5</sup> TCEQ found owners and operators of these small systems may not have the staff capacity or financial and technical resources to address known compliance issues or engage in the multi-step financial assistance application process at TWDB.<sup>6</sup> Despite the known challenges small systems face, TWDB's targeted outreach to these systems is minimal, missing opportunities to help level the playing field for those with more limited resources. Even when the agency does target small systems, these efforts are ad hoc and their effectiveness not well measured.

TWDB has not consistently tracked or measured the effectiveness of its outreach efforts.

Because all political subdivisions in Texas can potentially benefit from TWDB's programs, the agency generally does not target its webinars or financial assistance workshops to small or disadvantaged systems. However, agency data shows many large entities repeatedly receive funding from the agency's financial assistance programs, suggesting they are familiar with and understand the programs, and will continue applying for funding in the future. On the other hand, TWDB staff know of small system owners that do not know about or have difficulty accessing the agency's financial assistance programs.

Even in the few instances TWDB has targeted its outreach, it has not consistently tracked or measured its effectiveness in contributing to agency goals and meeting customers' needs. For instance, in 2020, TWDB initiated

Securing Safe Water, an effort to reduce the number of public water systems with outstanding public health violations. The agency contacted over 270 systems with violations to inform them they would be eligible for DWSRF funds.<sup>7</sup> At the end of the year, no contacted system had submitted a DWSRF financial application for consideration and TWDB did not attempt to find out why.<sup>8</sup> While a commendable effort, by not evaluating the effectiveness of its targeted phone calls, the agency is unable to identify and make needed changes based on lessons learned to better connect deserving projects with financial assistance.

TWDB's other outreach efforts support small water and wastewater systems through education and technical assistance, as described in the accompanying textbox. While beneficial, these efforts were not the result of a strategic agency goal and do not constitute a long-term approach or solution to address persistent barriers that limit access to TWDB's financial assistance programs.

### Pilot Programs for Small Systems

- **Asset Management Program for Small Systems:** CWSRF and DWSRF financing that facilitates the development of asset management and financial plans to help identify, plan for, and design new projects.
- **CFO-to-Go:** supports certain financial consultant services, including assistance with financial reporting required for recipients of CWSRF or DWSRF financing.

## Sunset Staff Recommendations

### Management Action

#### 2.1 Direct TWDB to collect and analyze information about its financial assistance applicants and outreach efforts to better inform and more effectively target agency activities.

This recommendation would direct TWDB to collect comprehensive information about what types of entities are and are not applying for and receiving funds, and its outreach activities. As part of this recommendation, TWDB should consider regularly surveying or calling a sample of financial assistance applicants and recipients about their experiences and any challenges they encountered. The agency should consider reviewing a sample of applications across its programs to identify any trends, such as common themes among low-ranked applications. To assess its outreach efforts, TWDB should consider seeking feedback from all of its targeted groups to evaluate trends and improve its programs and allocation of resources accordingly.

This recommendation would also direct TWDB to use this information to inform the need for changes to its financial assistance programs, internal processes, and guidance to applicants based on best practices. For example, if small, rural, or disadvantaged entities consistently noted problems completing financial assistance applications, the agency could consider changes to its guidance or a webinar targeted to those entities. If the agency uncovered it was consistently not getting many applications for flood projects with “green” components because of eligibility requirements the board established, it could consider revising those requirements to the extent allowable. Recognizing TWDB may not always have authority to change programmatic requirements, the agency should also use its analysis to inform the statutory recommendations it makes in its required *Biennial Legislative Priorities Report*.<sup>9</sup>

Comprehensively collecting, evaluating, and using this information would help TWDB continuously improve program design and implementation or suggest where the Legislature could do so, ultimately benefiting the agency and entities eligible for financial assistance.

## 2.2 Direct TWDB to develop a coordinated outreach plan to more efficiently promote agency programs, improve operations, and ensure its outreach efforts meet entities' needs and expectations.

This recommendation would direct the agency to use the results from its analysis performed as part of Recommendation 2.1 to develop and regularly update a strategic outreach plan. The plan should:

- Identify target audiences and the purpose and expected outcomes of various outreach activities, such as promoting the agency's programs, increasing the number of first-time applicants and financial assistance recipients, or targeting certain types of entities.
- Establish measurable outreach goals.
- Establish a process for evaluating the effectiveness of outreach activities.
- Identify the outreach duties of staff and board members and establish mechanisms for coordination.

This recommendation would help the agency structure and evaluate its outreach efforts, eliminate any overlap in responsibilities of various staff and board members, and clearly communicate the agency's outreach strategy to meet the needs of current and future customers.

## Fiscal Implication

These recommendations could be implemented with existing resources and would have no fiscal impact to the state. While the recommendations would require staff time to complete, they should improve internal operations and efficiency in the long term.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 15.434(b), Texas Water Code.

<sup>2</sup> In the Clean Water State Revolving Fund and Drinking Water State Revolving Fund programs, the initial application is called a project information form (PIF).

<sup>3</sup> Texas Water Development Board, *Strategic Plan Fiscal Years 2021-2025*, 2021, p. 13, accessed online February 21, 2022, [https://www.twdb.texas.gov/publications/reports/administrative/doc/StratPlan2021\\_2025.pdf](https://www.twdb.texas.gov/publications/reports/administrative/doc/StratPlan2021_2025.pdf).

<sup>4</sup> Texas Commission on Environmental Quality, *Sunset Self-Evaluation Report*, 2021, p. 595, accessed online February 21, 2022, [https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER\\_9-01-21.pdf](https://www.sunset.texas.gov/public/uploads/files/reports/TCEQ%20SER_9-01-21.pdf).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid., p. 596.

<sup>7</sup> Texas Water Development Board, *Drinking Water State Revolving Fund SFY 2020 Annual Report*, 2021, p. 16, accessed online February 21, 2022, <https://www.twdb.texas.gov/publications/reports/administrative/doc/FY20-DWSRF-AnnualReport.pdf>.

<sup>8</sup> Ibid.

<sup>9</sup> Section 6.156(a), Texas Water Code.

## ISSUE 3

### TWDB's Outdated Statute and Policies Should Be Updated to Eliminate an Unnecessary Advisory Committee and Reflect Some Standard Elements of Sunset Reviews.

#### Background

The Legislature created the State Water Implementation Fund for Texas (SWIFT) in 2013 with a one-time, \$2 billion transfer from the Economic Stabilization Fund, also known as the Rainy Day Fund, and tasked the Texas Water Development Board (TWDB) with using the fund to provide financial assistance for projects in the state water plan.<sup>1</sup> At the same time, the Legislature changed the agency's board structure from six at-large and part-time board members to three full-time members.<sup>2</sup>

To help guide and oversee SWIFT, the Legislature also created the seven-member SWIFT Advisory Committee with membership from the appropriations and natural resources committees, and the comptroller's office.<sup>3</sup> The accompanying table describes the committee's current membership. Statute requires the SWIFT Advisory Committee to review the overall operation, function, and structure of SWIFT at least semiannually, and to submit comments and recommendations to the board regarding the use of money in the fund, project prioritization criteria, and other aspects of the program.<sup>4</sup> Statute also requires the advisory committee to review the Flood Infrastructure Fund (FIF) and authorizes it to submit comments and recommendations regarding the use of the fund.<sup>5</sup> The advisory committee generally meets once or twice per year.

#### SWIFT Advisory Committee - 2021

Current Members
Senator Charles Perry, Co-Chair
Representative Cody Harris, Co-Chair
Senator Juan "Chuy" Hinojosa
Senator Lois Kolkhorst
Representative Alex Dominguez
Representative Mayes Middleton
Deputy Comptroller Lisa Craven

Unlike the SWIFT Advisory Committee, which is subject to review and abolishment under the Sunset Act, TWDB is only subject to review, not abolishment, since it is constitutionally created.<sup>6</sup>

#### Findings

##### The SWIFT Advisory Committee provided valuable oversight initially but is no longer needed.

This Sunset review is the state's first comprehensive look at the continuing need for the advisory committee since the Legislature created SWIFT. The review found the advisory committee initially provided significant guidance and feedback on SWIFT's operation, function, and structure. However, with 2022 being its eighth funding cycle, SWIFT is now a mature program successfully administered by TWDB, and the advisory committee is no longer necessary.

- **Limited impact over time.** As described in the textbox on the following page, the advisory committee provided meaningful comments and

### SWIFT Advisory Committee Comments and Recommendations - FY 2014

- Made recommendations concerning agency rules for achieving the rural, agricultural, and water conservation and reuse goals established in law.
- Made recommendations concerning agency rules for project prioritization.
- Encouraged a bifurcated management system with the trust company managing fund investments and TWDB managing financial lending programs.
- Encouraged TWDB to seek guidance from the Legislature during and after establishing SWIFT.

The SWIFT  
Advisory  
Committee has  
not contributed  
any formal  
recommendations  
since 2014.

recommendations to TWDB as it was developing rules for the new program and the agency incorporated many of these suggestions, such as initially offering the maximum subsidy allowed by law for qualifying rural and agricultural projects. However, the advisory committee has not contributed any formal, written recommendations regarding SWIFT since 2014 and has not provided any formal comments or recommendations related to FIF. Instead, advisory committee members generally rely on giving informal, verbal comments to TWDB, which could still happen in absence of the advisory committee. Because TWDB's administration of SWIFT has matured, advisory committee meetings are often very brief, with the agency presenting standard information and fielding few questions, indicating little continuing need for the advisory committee after nearly a decade has passed.

- **Other reporting and oversight mechanisms exist.** Other mechanisms provide ample oversight and sufficient opportunities for the Legislature to provide TWDB guidance on SWIFT's operations and functions. TWDB and its administration of SWIFT are subject to standard legislative oversight through the appropriations process and Senate Water, Agriculture, and Rural Affairs and House Natural Resources standing committees. Additionally, SWIFT is subject to oversight by the State Auditor's Office and underwent an audit in 2016.<sup>7</sup> Should the Legislature feel increased oversight is needed, leadership could use interim charges to review the fund's performance or TWDB's program administration. For example, as part of its interim charges in 2019, the relevant Senate standing committee took testimony from TWDB and other stakeholders on laws, processes, and water storage and availability.<sup>8</sup> As part of its testimony, TWDB explained the progress made on several SWIFT-funded projects.

As described in Appendix F, TWDB must also submit several reports and publish other information on SWIFT's performance and management, providing other avenues for the Legislature and interested stakeholders to stay informed. Further, statute requires the Texas Treasury Safekeeping Trust Company, which manages and invests the fund in accordance with an investment plan and guidance from the comptroller's office, to annually produce a report describing the investment of the fund and to contract with a certified public accountant to conduct independent audits of the fund.<sup>9</sup>



**The state benefits from continued legislative oversight of TWDB.**

Although not subject to abolishment under the Sunset Act, the Legislature placed TWDB under the Sunset Commission's oversight in 2023, requiring a comprehensive review of TWDB's operations using the criteria of the Sunset Act. Through that review, Sunset staff have identified a number of opportunities to enhance the effectiveness, efficiency, transparency, and accountability of TWDB. More broadly, continued oversight by the commission provides future legislatures a powerful tool to assess TWDB and invite public input on improving it.

**TWDB's policies defining the board's role are outdated and lack information necessary to promote clear lines of responsibility and accountability.**

When the Legislature changed the agency's board from being a part-time to full-time policymaking body, it did not update the board's general duties to reflect its new status. Without any clear statutory direction or regulatory functions similar to other agencies with full-time policymaking bodies, the board was left in the position of needing to update its policy separating the duties of board and staff to avoid blurred lines of responsibility. However, the board last updated its policy in 2002, well before the Legislature changed its structure and entrusted the agency with significant new funding, programs, and functions. Separate from its formal policy, the agency maintains an informal document that describes the board's delegation of authority but it is also outdated, last changed in 2017. As such, the agency's policies fail to adequately reflect the board's considerable outreach role or responsibility for flood planning.

Key policies fail to reflect the board's outreach role or responsibility for state flood planning.

Board members have identified outreach and travel as a significant aspect of their position, yet the board's policies do not include any discussion of that responsibility or how it differs from staff's role, contributing to the agency's uncoordinated approach to outreach discussed in Issue 2. Over the last two fiscal years, board members engaged in approximately 600 virtual and in-person outreach efforts, including giving presentations at water-related conferences, writing articles for trade publications, attending stakeholder meetings, and conducting one-on-one meetings with communities throughout the state. These efforts add value to the agency as board members often learn about communities' needs through outreach and travel, but clarifying their role and how it fits in to a coordinated agency approach would promote more efficient operations and accountability for board members and staff.

**TWDB does not comply with the statutory requirement to review its administrative rules every four years.**

The Sunset Act directs the Sunset Commission to assess each agency's rulemaking process, including the extent to which agencies encourage public participation in rulemaking.<sup>10</sup> As part of this assessment, Sunset considers an agency's compliance with statutory requirements in the Administrative

Procedure Act, including an agency's review and consideration of the continuing need for each of its rules every four years from the date each rule took effect.<sup>11</sup> TWDB has not complied with that requirement. The agency's failure to comply with this requirement results in stakeholders and members of the public having to comply with rules that may not accurately reflect current law and agency practice. In addition, neglecting to review rules allows for the continuation of requirements that may not be meaningful or needed.

**TWDB's statutes do not reflect standard language typically applied across the board during Sunset reviews for board member training.**

TWDB's statute does not contain newer board member training requirements.

The Sunset Commission has developed a set of standard recommendations that it applies to all state agencies reviewed unless an overwhelming reason exists not to do so. These across-the-board provisions (ATBs) reflect an effort by the Legislature to place policy directives to prevent problems from occurring, instead of reacting to problems after the fact. ATBs are statutory administrative policies adopted by the Sunset Commission that contain "good government" standards. The ATBs reflect review criteria contained in the Sunset Act designed to ensure open, responsive, and effective government.

TWDB's statute contains standard language requiring board members to receive training and information necessary for them to properly discharge their duties. However, statute does not contain newer requirements for all topics the training must cover, such as a discussion of the scope of, and limitations on, the board's rulemaking authority. Statute also does not require the agency to create a training manual for all board members or specify that board members must attest to receiving and reviewing the training manual annually.

**TWDB has three reporting requirements that are no longer necessary.**

TWDB is currently required to produce reports for inactive programs.

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished.<sup>12</sup> The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, or posting requirements. State law requires TWDB to produce nine reports that are specific to the agency. Many of these reporting requirements continue to be useful, but three are no longer needed. Sunset recommends eliminating the reports for the Water Loan Assistance Program, Water Bond Insurance Program, and Storage Acquisition Fund, all of which are inactive programs. Appendix G lists the agency's reporting requirements and Sunset staff's analysis of their need.



## Sunset Staff Recommendations

### *Change in Statute*

#### **3.1 Abolish the SWIFT Advisory Committee.**

This recommendation would eliminate the SWIFT Advisory Committee from statute, effective September 1, 2023. As part of this recommendation, the Texas Infrastructure Resiliency Fund Advisory Committee membership would no longer be tied to the SWIFT Advisory Committee.<sup>13</sup> Instead, the Texas Infrastructure Resiliency Fund Advisory Committee's statute would clearly list all eight of its members, including the director of the Texas Division of Emergency Management, who would continue serving on the committee as a nonvoting member. Also, as part of this recommendation, TWDB's annual report on SWIFT's use of Historically Underutilized Businesses would be published on the agency's website instead of being submitted to the SWIFT Advisory Committee.

#### **3.2 Amend TWDB's Sunset review date to 2035.**

Because TWDB is not subject to abolishment under the Sunset Act, but the Legislature and the public benefit from continued legislative oversight of the agency, this recommendation would extend the Sunset date in TWDB's statute to 2035, placing the agency under Sunset review again in 12 years. By extending the agency's review date to 2035, TWDB would be reviewed concurrently with similar agencies tasked with overseeing the state's natural resources, such as the Texas Commission on Environmental Quality and the Texas State Soil and Water Conservation Board.

#### **3.3 Update the standard across-the-board requirement related to board member training.**

This recommendation would require TWDB to develop a training manual that each board member attests to receiving annually, and require existing board member training to include information about the scope of and limitations on the board's rulemaking authority. The training should provide clarity that the Legislature sets policy, and agency boards and commissions have rulemaking authority necessary to implement legislative policy.

#### **3.4 Abolish TWDB's reports on the Water Loan Assistance Program, Water Bond Insurance Program, and Storage Acquisition Fund, and continue all other reporting requirements.**

This recommendation would eliminate TWDB's reports on the Water Loan Assistance Program, Water Bond Insurance Program, and Storage Acquisition Fund. TWDB's remaining six reporting requirements would be continued because they provide information useful both to the agency and the public. Appendix G summarizes all of the agency's reporting requirements and shows which reports would be continued and abolished under this recommendation.

### *Management Action*

#### **3.5 Direct TWDB to update its policy regarding the separation of duties of board members from those of staff.**

By December 31, 2022, TWDB should ensure its formal policy and any other informal guidance reflect the current responsibilities of the board members and staff. As a part of this recommendation, the agency should consider conducting a holistic review of board member activities, not only related to outreach, travel, and flood planning, but also in overseeing key agency functions and performance as discussed in

Issue 1. Having updated policies will not only promote clear lines of responsibility but aid in continuity of operations when the governor appoints new board members.

### 3.6 Direct TWDB to adopt a rule review plan.

This recommendation would direct TWDB to develop and adopt a rule review plan to help ensure it complies with the statutory requirement to regularly review its rules every four years, including determining whether the initial reasons for adopting the rules continue to exist. The plan should include a schedule indicating when each chapter of rules will be reviewed so all rules are reviewed timely. TWDB would adopt and submit the plan to the Sunset Commission by December 31, 2022. The agency should also post the plan on its website to ensure stakeholders and the public are aware of upcoming opportunities to provide input on rule changes. Finally, TWDB should consider filing its rule review plan with the Office of the Secretary of State for publication in the *Texas Register*.

## Fiscal Implication

Members of the SWIFT Advisory Committee do not receive reimbursement for travel expenses so abolishing the committee would have no fiscal impact.<sup>14</sup> Other recommendations could be implemented with existing resources and would have no fiscal impact to the state.

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<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 15.432, Texas Water Code.

<sup>2</sup> Chapter 207 (HB 4), Acts of the 83rd Texas Legislature, Regular Session, 2013.

<sup>3</sup> Section 15.438(a), Texas Water Code.

<sup>4</sup> Section 15.438, Texas Water Code.

<sup>5</sup> Section 15.540, Texas Water Code.

<sup>6</sup> Section 6.013, Texas Water Code and 49(c), Article III, Texas Constitution.

<sup>7</sup> State Auditor's Office, *An Audit Report on The State Water Implementation Revenue Fund for Texas at the Water Development Board*, 2016, accessed online February 14, 2022, <https://sao.texas.gov/reports/main/16-039.pdf>.

<sup>8</sup> Senate Committee on Water and Rural Affairs, *Interim Report*, 2020, pp. 21-33, accessed online February 7, 2022, <https://lrl.texas.gov/scanned/interim/86/W291R.pdf>.

<sup>9</sup> Section 15.433(e), Texas Water Code.

<sup>10</sup> Section 325.011(8), Texas Government Code.

<sup>11</sup> Section 2001.039, Texas Government Code.

<sup>12</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

<sup>13</sup> Section 16.456(a), Texas Water Code.

<sup>14</sup> Section 15.438(f), Texas Water Code.

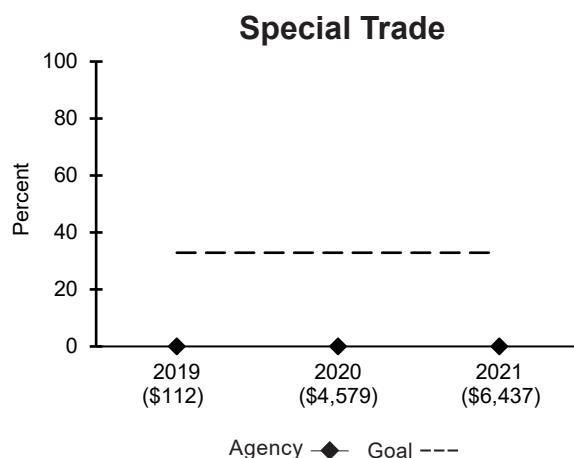
# APPENDIX A

## Historically Underutilized Businesses Statistics, FYs 2019-21

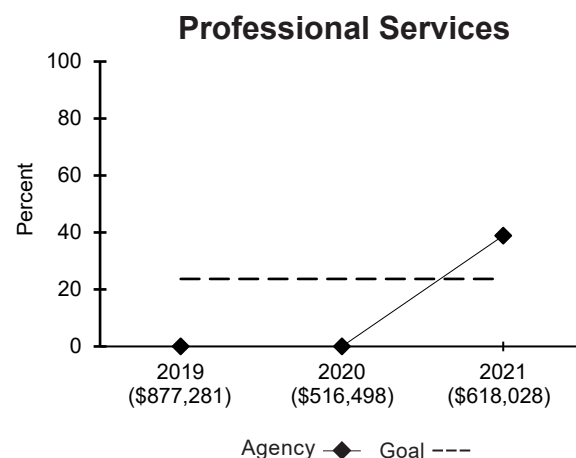
The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.<sup>1</sup>

The following material shows trend information for the Texas Water Development Board's use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.<sup>2</sup> In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from fiscal years 2019-21. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency exceeded the state goal for HUB spending in the commodities categories each year from fiscal years 2019-21. The agency exceeded the state goal for HUB spending in the professional services category for fiscal year 2021 but fell short of the state goal in fiscal years 2019 and 2020. The agency did not meet the state goal for HUB spending in the special trade and other services categories over the last three fiscal years. The agency did not have significant spending in the heavy construction or building construction categories.

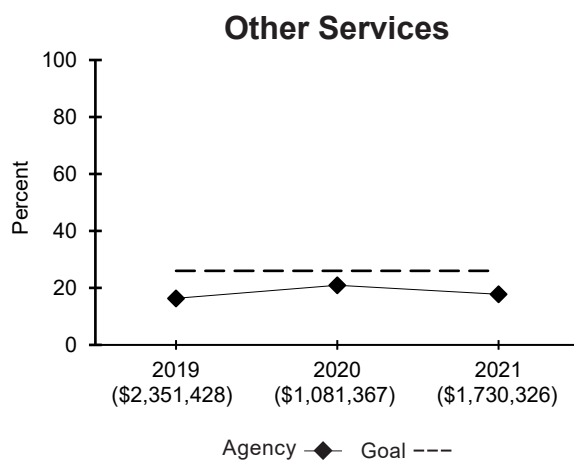


The agency did not meet the state goal for HUB spending in the special trade category in each of the last three fiscal years. However, the agency had minimal spending in this category.

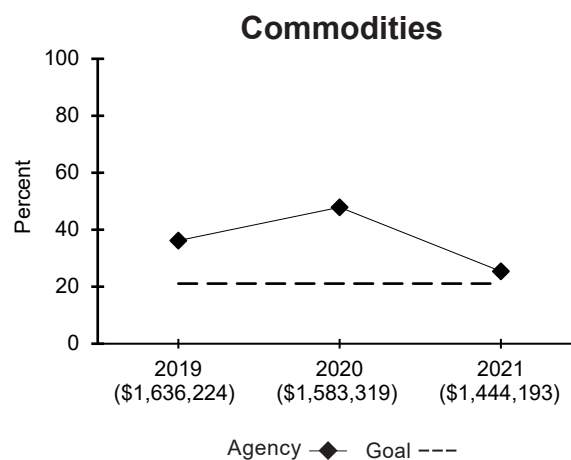


The agency exceeded the state goal for HUB spending in the professional services category in fiscal year 2021 but did not meet the goal in fiscal years 2019 and 2020.

## Appendix A



The agency did not meet the state goal for HUB spending in the other services category in each of the last three fiscal years.



The agency exceeded the state goal for HUB spending in the commodities category in each of the last three fiscal years.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(B), Texas Government Code.

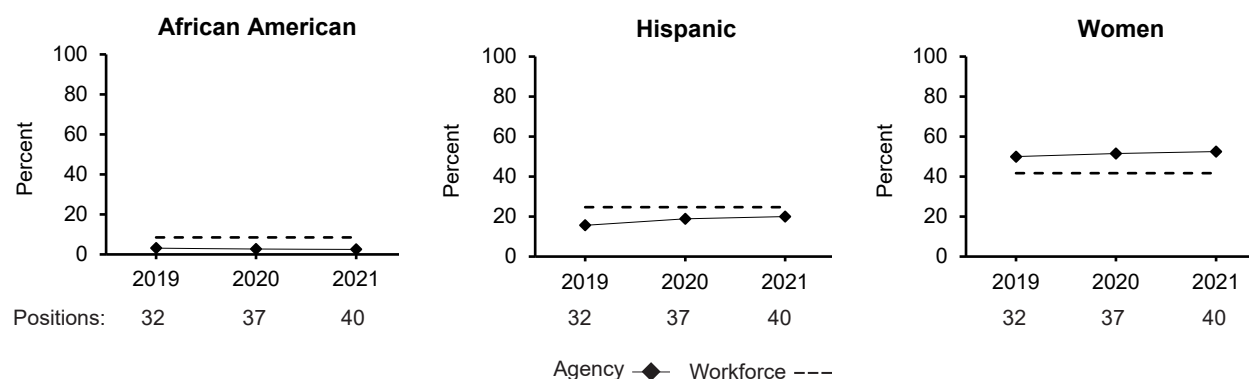
<sup>2</sup> Chapter 2161, Texas Government Code.

## APPENDIX B

### Equal Employment Opportunity Statistics, FYs 2019-21

In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and women in all applicable categories by the Texas Water Development Board.<sup>1</sup> The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.<sup>2</sup> In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African Americans, Hispanics, and women in each job category.<sup>3</sup> These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from fiscal years 2019-21. The agency did not meet statewide civilian workforce percentages for African Americans and Hispanics in most categories. The agency met or exceeded statewide civilian percentages for women in the administration and administrative support categories but fell short of statewide civilian workforce percentages for women in the professional category. The agency has no employees in the technical, service/maintenance, skilled craft, or protective services categories.

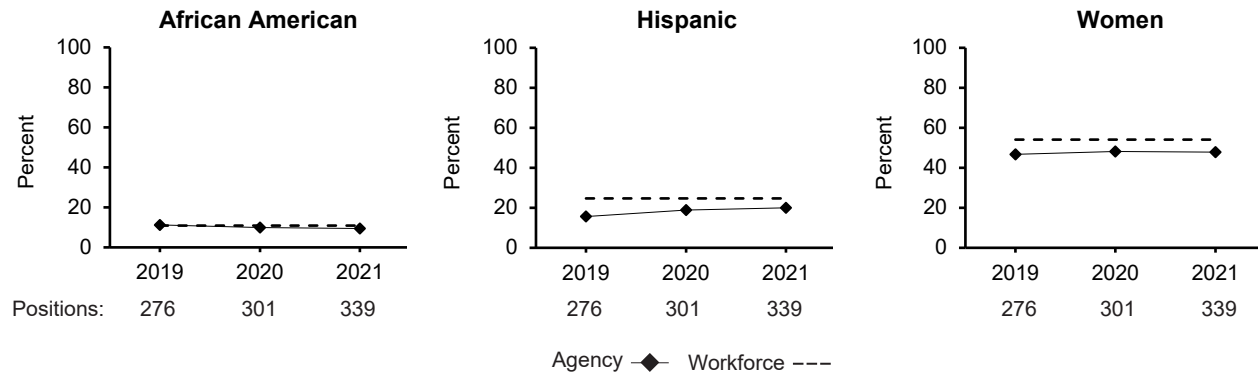
#### Administration



The agency exceeded statewide civilian percentages for women in each of the last three fiscal years. The agency fell slightly below statewide civilian workforce percentages for African Americans and Hispanics during that same period.

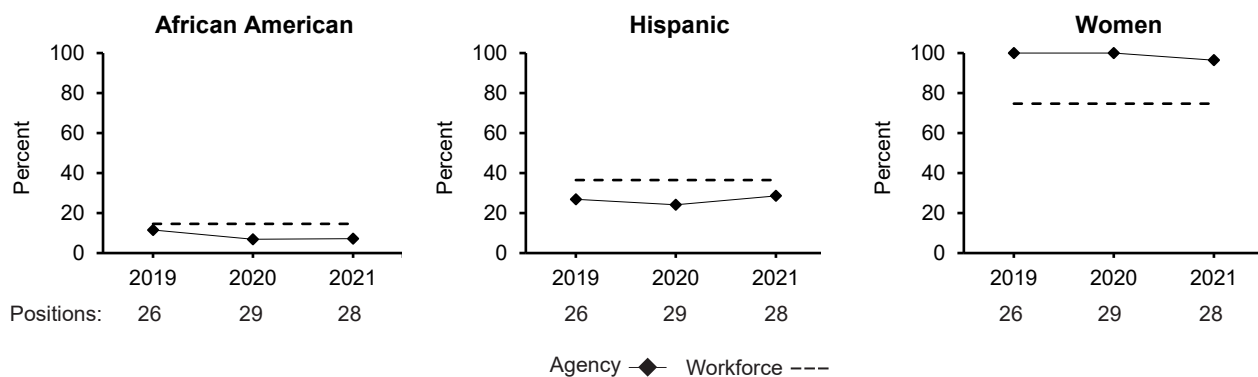
## Appendix B

### Professional



The agency met or nearly met statewide civilian percentages for African Americans in each of the last three years. The agency fell slightly below statewide civilian percentages for Hispanics and women during that same period.

### Administrative Support



The agency exceeded statewide civilian percentages for women in each of the last three fiscal years but did not meet statewide civilian percentages for African Americans and Hispanics in that same period.

<sup>1</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 325.011(9)(A), Texas Government Code.

<sup>2</sup> Section 21.501, Texas Labor Code.

<sup>3</sup> Based on the most recent statewide civilian workforce percentages published by the Texas Workforce Commission.



# APPENDIX C

## Key TWDB Financial Assistance Programs

Financial Assistance Program	Description	Example Projects	Eligible Applicants	Funding Type	Source of Funds	Funds Committed in FY 2021
Clean Water State Revolving Fund (CWSRF)	Facilitates compliance with the water pollution control requirements of the federal Clean Water Act.	<ul style="list-style-type: none"> <li>Wastewater treatment infrastructure</li> <li>Reuse and recycle facilities</li> <li>Estuary management and protection projects</li> <li>Control of nonpoint source pollution</li> <li>Stormwater recapture infrastructure</li> </ul>	<ul style="list-style-type: none"> <li>Political subdivisions</li> <li>Wastewater treatment management agencies</li> <li>State agencies</li> <li>Indian tribal organizations</li> <li>Private entities (certain nonpoint source pollution projects only)</li> </ul>	Loan Grant <sup>1</sup>	Federal State	\$1,032,345,800
Flood Infrastructure Fund (FIF) <sup>2</sup> and Texas Infrastructure Resiliency Fund (TIRF) <sup>3</sup>	Facilitates implementation of drainage, flood mitigation, and flood control projects.	<ul style="list-style-type: none"> <li>Project design</li> <li>Retention basins</li> <li>Levees</li> <li>Property acquisition</li> <li>Stream gauges</li> <li>Education campaigns</li> </ul>	Political subdivisions	Loan Grant	State	\$347,183,430
State Water Implementation Fund for Texas (SWIFT) <sup>4</sup>	Facilitates implementation of projects listed in the state water plan.	<ul style="list-style-type: none"> <li>Conservation and reuse projects</li> <li>Groundwater and seawater desalination</li> <li>Pipelines</li> <li>Reservoirs</li> <li>Well fields</li> </ul>	<ul style="list-style-type: none"> <li>Political subdivisions</li> <li>Nonprofit water supply corporations</li> </ul>	Loan	State	\$254,190,000
Drinking Water State Revolving Fund (DWSRF)	Facilitates compliance with drinking water standards and furthers the health objectives of the federal Safe Drinking Water Act.	<ul style="list-style-type: none"> <li>Water system upgrades or replacement</li> <li>New water systems</li> <li>Water system consolidation</li> </ul>	<ul style="list-style-type: none"> <li>Community public water systems</li> <li>Nonprofit, non-community public water systems</li> <li>State agencies</li> </ul>	Loan Grant <sup>1</sup>	Federal State	\$112,674,221

## Appendix C

Financial Assistance Program	Description	Example Projects	Eligible Applicants	Funding Type	Source of Funds	Funds Committed in FY 2021
Texas Water Development Fund (DFund)	Facilitates planning, design, and construction of water supply, wastewater, and flood control projects.	<ul style="list-style-type: none"> <li>Wells</li> <li>Pumping facilities</li> <li>Storage reservoirs and tanks</li> <li>Water rights sale</li> <li>Sewer treatment plants</li> <li>Stormwater retention basins</li> <li>Coastal erosion control</li> </ul>	<ul style="list-style-type: none"> <li>Political subdivisions</li> <li>Nonprofit water supply corporations</li> </ul>	Loan	State	\$42,990,000
Regional Flood Planning	Supports regional flood planning groups' development of regional flood plans, including contracts with technical consultants.	<ul style="list-style-type: none"> <li>Technical consultants</li> <li>Certain administrative costs</li> </ul>	Designated political subdivision or administrative agent for regional flood planning groups	Grant	State	\$19,500,000
Research Grants	Supports TWDB's mission through a range of state and federal partnership activities, including scientific research and data collection.	<ul style="list-style-type: none"> <li>Development of mining water use estimates and projections to support the regional water planning process</li> <li>Pass-through funds to support the work of the Texas Produced Water Consortium</li> </ul>	A range of entities, including academic institutions and river authorities	Grant	Federal State	\$8,632,851
Water Infrastructure Improvements for the Nation (WIIN)	Facilitates water infrastructure improvements to promote public health and environmental protection for small, underserved, and disadvantaged communities.	<ul style="list-style-type: none"> <li>Water line replacement and other infrastructure projects</li> </ul>	<ul style="list-style-type: none"> <li>Certain small or disadvantaged community public water systems</li> <li>Nonprofit, non-community public water systems</li> </ul>	Grant	Federal State	\$3,346,000
Regional Water Planning	Supports regional water planning groups' development of regional water plans, including contracts with technical consultants.	<ul style="list-style-type: none"> <li>Technical consultants</li> <li>Certain administrative costs</li> </ul>	Designated political subdivision or administrative agent for regional water planning groups	Grant	State	\$2,844,856

## Appendix C

Financial Assistance Program	Description	Example Projects	Eligible Applicants	Funding Type	Source of Funds	Funds Committed in FY 2021
Agricultural Water Conservation Fund (Ag)	Facilitates implementation of agricultural water conservation projects.	<ul style="list-style-type: none"> <li>– Irrigation equipment upgrades and efficiency improvements</li> <li>– Water conservation research and demonstration projects</li> </ul>	<ul style="list-style-type: none"> <li>– Political subdivisions</li> <li>– State agencies and universities (grant only)</li> </ul>	Loan Grant	State	\$1,200,000
Economically Distressed Areas Program (EDAP)	Facilitates implementation of water supply and wastewater projects in economically distressed areas with inadequate services.	<ul style="list-style-type: none"> <li>– Water and wastewater service for first-time users</li> <li>– Water transmission and distribution lines</li> <li>– Wells</li> <li>– Pump stations</li> <li>– Wastewater treatment plant improvements</li> </ul>	<ul style="list-style-type: none"> <li>– Certain political subdivisions</li> <li>– Certain nonprofit water supply corporations</li> </ul>	Loan Grant	State	\$0 <sup>5</sup>
Federal Emergency Management Agency's (FEMA) Flood Mitigation Assistance	Facilitates state and community implementation of cost-effective ways to reduce or eliminate the long-term risk of flood damage for structures insured under the National Flood Insurance Program (NFIP).	<ul style="list-style-type: none"> <li>– Hazard mitigation plan development or updates</li> <li>– Structure elevation or retrofitting</li> <li>– Structure relocation or acquisition</li> <li>– Project feasibility and preliminary studies</li> <li>– Drainage construction</li> </ul>	Certain political subdivisions <sup>6</sup>	Grant	Federal	\$44,270,860 <sup>7</sup>

## Appendix C

### Dormant or Inactive Financial Assistance Programs<sup>8</sup>

Financial Assistance Program	Description	Status
Groundwater Conservation District Loan Program (GDLF)	State-funded program to support a groundwater conservation district's or another groundwater management entity's initial expenses, including start-up and operating costs.	Dormant.
Rural Water Assistance Fund (RWAF)	State-funded program for water and wastewater projects at small, rural water utilities.	Dormant. CWSRF and DWSRF largely supplanted RWAF.
State Participation (SP)	State-funded program to finance and assume a temporary ownership interest in a regional water, wastewater, or flood control project.	Dormant. SWIFT largely supplanted SP. SWIFT offers temporary state ownership for projects listed in the state water plan.
Water Infrastructure Fund (WIF)	State-funded program to facilitate the planning, design and construction of water supply, wastewater, and flood control projects.	Inactive. SWIFT largely supplanted WIF. TWDB will not fund any new loans.

<sup>1</sup> The federal state revolving fund programs offer "principal forgiveness," which functions like a grant.

<sup>2</sup> The Flood Infrastructure Fund will support the implementation of projects identified in the state flood plan. The first state flood plan is due September 2024.

<sup>3</sup> The Texas Infrastructure Resiliency Fund (TIRF) consists of four accounts: floodplain management, Hurricane Harvey, federal matching, and flood plan implementation. The Texas Water Development Board (TWDB) administers TIRF, but the Texas Division of Emergency Management has primary authority in financing projects using the Hurricane Harvey account.

<sup>4</sup> The State Water Implementation Fund for Texas (SWIFT) Program includes two funds — SWIFT and the State Water Implementation Revenue Fund for Texas (SWIRFT). TWDB issues revenue bonds through SWIRFT. SWIFT funds are transferred to SWIRFT to cover the difference between the actual interest rate and the subsidized interest rates and deferral options available to participants.

<sup>5</sup> The Economically Distressed Areas Program (EDAP) exhausted its bond capacity in 2019, so TWDB did not accept applications in fiscal years 2020-21. In 2021, the Legislature provided TWDB with additional EDAP bonding authority and appropriations.

<sup>6</sup> Eligible applicants are political subdivisions that participate in National Flood Insurance Program (NFIP) and have a Federal Emergency Management Agency (FEMA) approved Hazard Mitigation Plan.

<sup>7</sup> TWDB administers FEMA's Flood Mitigation Program for Texas by providing technical assistance and support for eligible entities. FEMA, not TWDB, accepts and approves applications. The federal pass-through funds awarded in fiscal year 2021 are from the fiscal year 2019 Flood Mitigation Assistance funding cycle.

<sup>8</sup> "Dormant" refers to programs with available funding but little interest from eligible applicants. "Inactive" refers to programs that are not accepting new applications.

# APPENDIX D | Key Water Planning Entities

Entity	Description
Groundwater Conservation District (GCD) <sup>1</sup>	A local unit of government typically authorized by the Legislature and approved by voters at the local level to manage and protect groundwater. All GCDs are part of at least one groundwater management area. Texas Water Development Board (TWDB) provides technical assistance to GCDs and reviews their groundwater management plans for administrative completeness. There are 98 GCDs in Texas as of fiscal year 2021. <sup>2</sup>
Groundwater Management Area (GMA)	An area of the state, generally conforming to major aquifer boundaries, used to facilitate the most suitable management of groundwater. There are 16 GMAs in Texas.  Every five years, the GCDs in a GMA develop and adopt desired future conditions for aquifers within their boundaries, a process known as joint groundwater planning. TWDB provides technical expertise, data, and modeling tools to support GMAs. The agency uses the desired future conditions to develop modeled available groundwater values that serve as the amount of groundwater available for water supply planning purposes.
Regional Flood Planning Group (RFPG)	A planning group composed of various statutory interests, including municipalities, utilities, river authorities, businesses, environmental, and other interests, that identifies areas prone to flood and flood control solutions for those areas. <sup>3</sup> There are 15 RFPGs in Texas.  TWDB provides grants, technical expertise, administrative support, data, and modeling tools to support RFPGs in the regional flood planning process. Every five years the agency will review and approve regional flood plans, which will form the basis of the state flood plan. TWDB will publish the first state flood plan in September 2024.
Regional Water Planning Group (RWPG)	A planning group composed of various statutory interests, including municipalities, utilities, river authorities, businesses, environmental, and other interests, that designs strategies for surface water and groundwater to meet future water demand. <sup>4</sup> There are 16 RWPGs in Texas.  TWDB provides grants, technical expertise, administrative support, data, and modeling tools to support RWPGs in the regional water planning process. Every five years the agency reviews and approves regional water plans, which form the basis of the state water plan. TWDB adopted the <i>2022 State Water Plan</i> in July 2021.

<sup>1</sup> Some older Groundwater Conservation Districts (GCD) are named Underground Water Conservation Districts in their enabling statutes but function the same as GCDs.

<sup>2</sup> In addition to the 98 GCDs, Texas has three other districts that manage groundwater: the Harris-Galveston Subsidence District, Fort Bend Subsidence District, and the Edwards Aquifer Authority.

<sup>3</sup> All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 16.062, Texas Water Code.

<sup>4</sup> Section 16.035, Texas Water Code.



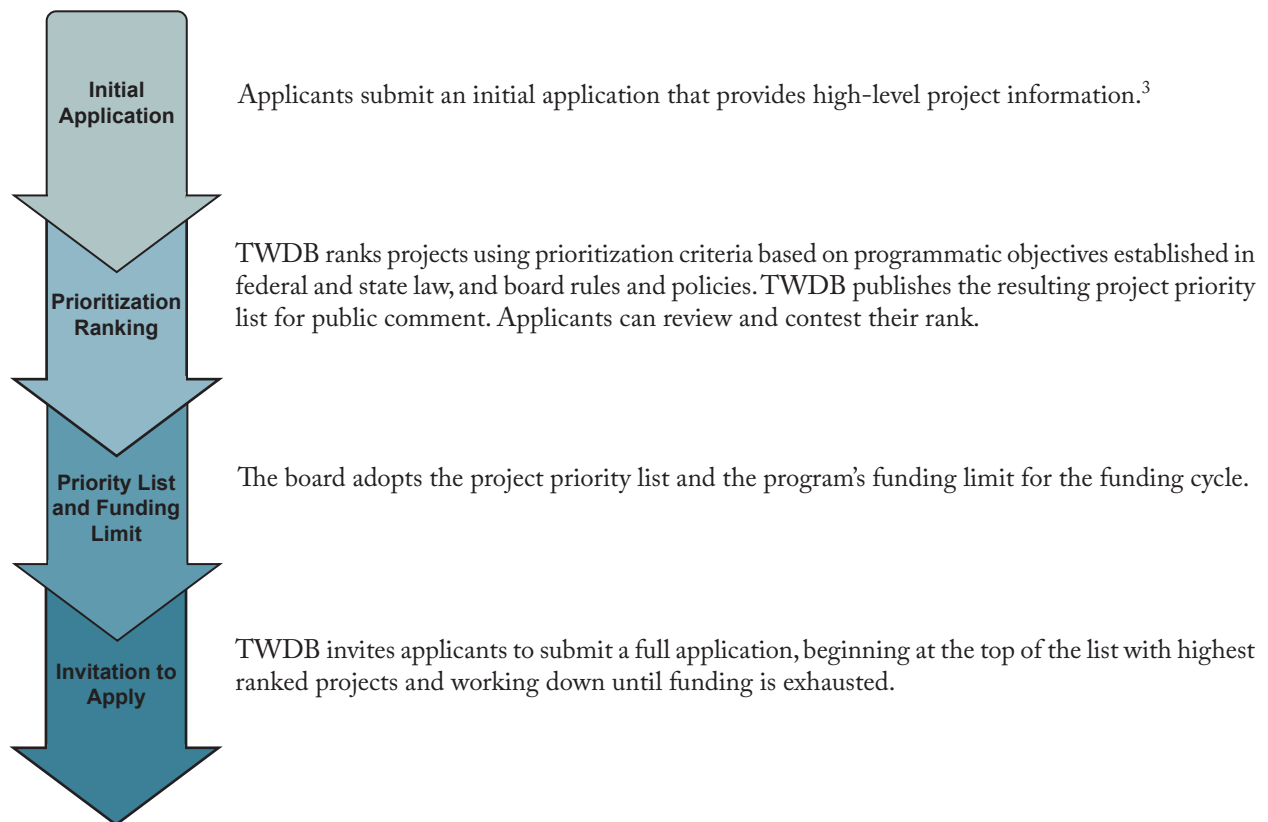


# APPENDIX E

## Application and Project Review Processes

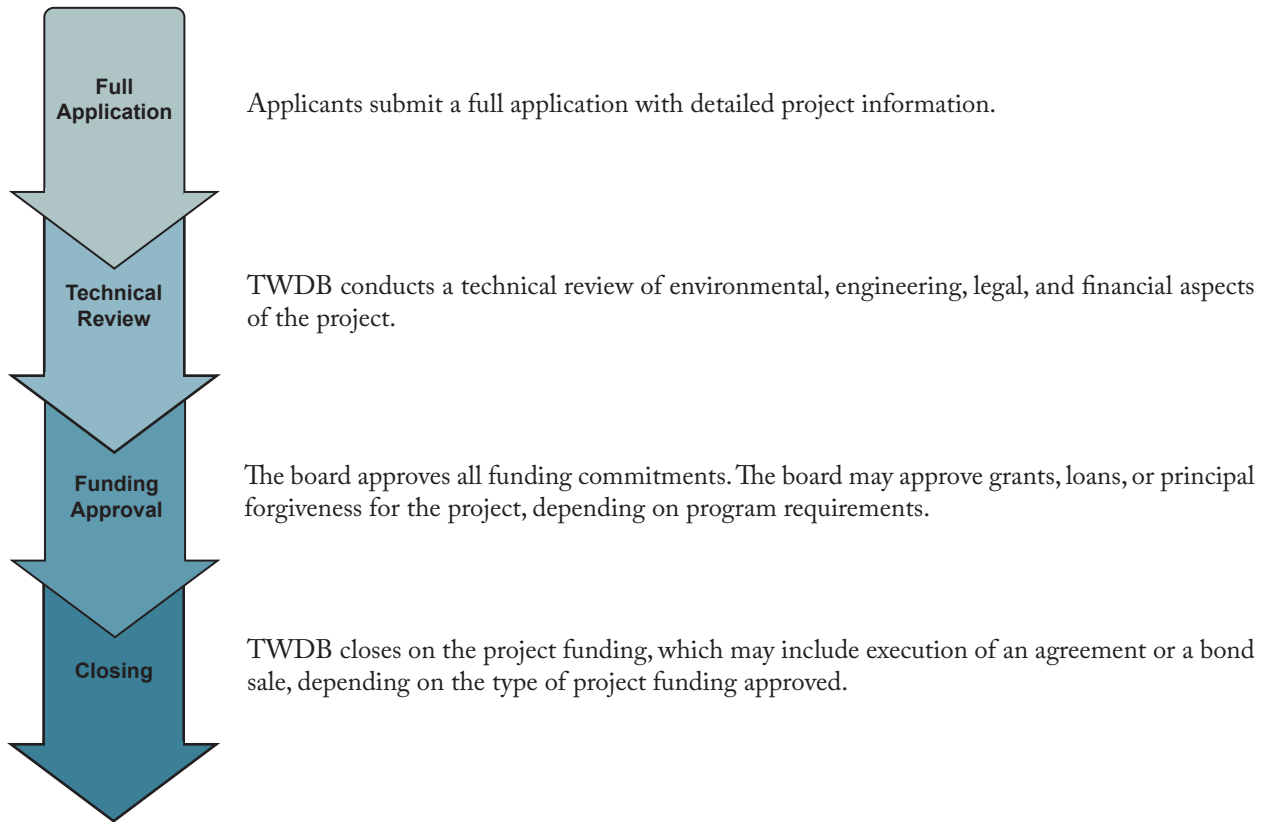
Five of the Texas Water Development Board's (TWDB) financial assistance programs use a two-phase application process.<sup>1</sup> An initial application phase prioritizes projects seeking funding within each program, while a full application phase invites the highest ranked projects to apply. Programs that do not engage in prioritization begin at the full application phase.<sup>2</sup>

### Initial Application



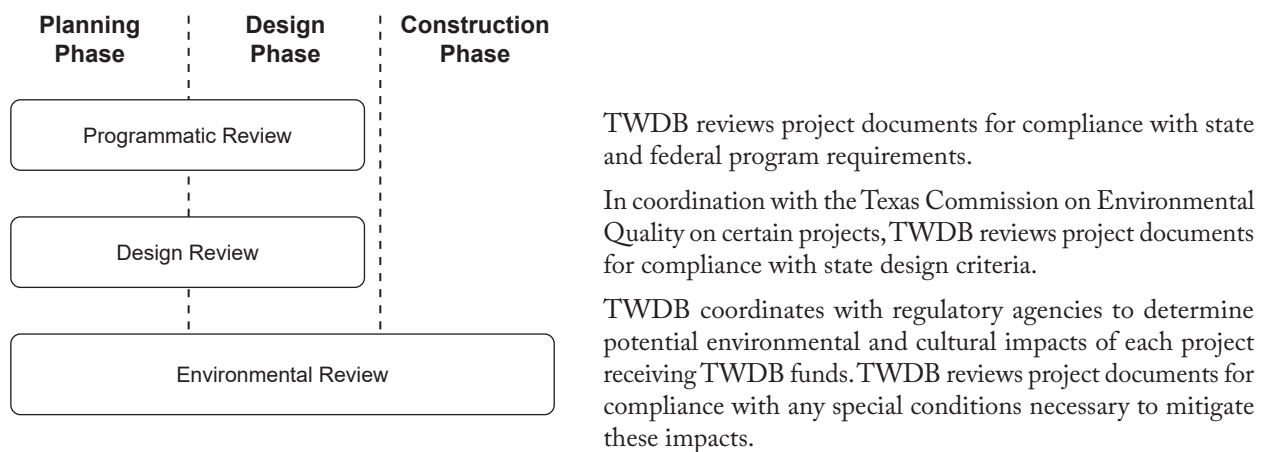
## Appendix E

### Full Application



### Project Review

After closing, the project undergoes TWDB's project review process. The project's design engineer prepares and submits several documents for various reviews, listed below. Depending on any changes to the project or impacts discovered during construction, TWDB may revisit the reviews throughout the project's lifetime to ensure it meets all state and federal requirements.<sup>4</sup>



## ***Appendix E***

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<sup>1</sup> Clean Water State Revolving Fund, Drinking Water State Revolving Fund, Economically Distressed Areas Program, Flood Infrastructure Fund, and State Water Implementation Fund for Texas.

<sup>2</sup> Agricultural Water Conservation Loan and Grant Program, Rural Water Assistance Fund, and Texas Water Development Fund.

<sup>3</sup> An initial application includes a project information form (PIF) for federal programs and an abridged application for state programs.

<sup>4</sup> The Texas Commission on Environmental Quality retains design review of water supply projects for surface water treatment plants, public water supply wells, new interconnections, disinfection, and treatment projects, while the Texas Water Development Board reviews wastewater projects and remaining water supply projects like addition of distribution lines.



# APPENDIX F

## State Water Implementation Fund for Texas (SWIFT) Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Frequency
1. SWIFT Biennial Report	15.440(a), Texas Water Code	Reports use of SWIFT funds, including support of water supply projects for rural political subdivisions or agricultural water conservation, or designed for water conservation or reuse.	Governor, Lieutenant Governor, Speaker of the House, Legislature	Biennially
2. Cash Flow Forecast Report	15.433(g), Texas Water Code	Forecasts of the cash flows into and out of the fund to ensure the trust company can maintain sufficient liquidity to meet the needs of the fund while striving to preserve its purchasing power.	Texas Treasury Safekeeping Trust Company	Annually, with updates as appropriate
3. Use of Historically Underutilized Businesses (HUB)	15.438(n), Texas Water Code	Reports compliance with statewide HUB goals and participation of HUBs in projects receiving SWIFT funds related to bond enhancement agreements.	SWIFT Advisory Committee	Annually
4. Website Content	15.440(b), Texas Water Code	Requires Texas Water Development Board (TWDB) to post and update information on its website, such as progress made in developing needed water supply, a description of projects in each regional water planning area funded through bonds, and a description of the fund's performance and health.	Public	Regularly





# APPENDIX G

## Texas Water Development Board Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Biennial Legislative Priorities Report	6.156(a), Texas Water Code	Reports on agency activities and provides recommendations for necessary and desirable legislation.	Governor and Legislature	Continue
2. Desalination Progress Report	16.060(b), Texas Water Code	Reports progress on the implementation of seawater or brackish groundwater desalination activities.	Governor, Lieutenant Governor, Speaker of the House	Continue
3. Geographic Data Recommendations Report	16.021(d), Texas Water Code	Provides recommendations regarding geographic data acquisition needs and priorities, funding needs, and opportunities to improve state government operations through geographic data use.	Governor, Lieutenant Governor, Speaker of the House	Continue
4. State Flood Plan	16.061(d), Texas Water Code	Provides for preparation and response to protect against loss of life and property, and guides flood control policy.	Governor, Lieutenant Governor, Speaker of the House, appropriate legislative committees and legislative leadership	Continue
5. State Water Implementation Fund for Texas (SWIFT) Biennial Report	15.440(a), Texas Water Code	Reports use of SWIFT funds, including support of water supply projects for rural political subdivisions or agricultural water conservation, or designed for water conservation or reuse.	Governor, Lieutenant Governor, Speaker of the House, Legislature	Continue
6. State Water Plan	16.051(e), Texas Water Code	Provides for the development, management, and conservation of water resources and prepares for and responds to drought conditions.	Governor, Lieutenant Governor, Speaker of the House, appropriate legislative committees	Continue
7. Storage Acquisition Program Funding Recommendations	15.3061, Texas Water Code	Identifies projects approved by the board under this program but for which money is not available.	Lieutenant Governor, Speaker of the House, Legislative Budget Board	Abolish
8. Water Bond Insurance Program Report	15.218, Texas Water Code	Reports on the financial impact of the Water Bond Insurance Program during the immediately preceding biennium.	Governor, Lieutenant Governor, Speaker of the House	Abolish
9. Water Loan Assistance Program Recommendations	15.108, Texas Water Code	Identifies projects approved by the board under this program but for which money is not available.	Lieutenant Governor, Speaker of the House, Legislative Budget Board	Abolish



# APPENDIX H

## Staff Review Activities

During the review of the Texas Water Development Board (TWDB), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended board meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from interest groups and the public; reviewed agency documents and reports, state statutes, legislative reports, previous legislation, and literature; and performed background and comparative research.

In addition, Sunset staff also performed the following activities unique to this agency:

- Interviewed board members.
- Toured agency-funded water supply projects.
- Toured and interviewed staff at TWDB's Houston field office.
- Attended TWDB's Water For Texas conference.
- Attended a meeting and interviewed representatives of a regional water planning group.
- Attended meetings of regional flood planning groups and groundwater management areas.
- Attended meetings of the Water Conservation Advisory Council and Groundwater Protection Committee.
- Attended meetings of the State Water Implementation Fund for Texas Advisory Committee and Texas Infrastructure Resiliency Fund Advisory Committee.
- Surveyed members of regional water and flood planning groups, entities that applied for TWDB's financial assistance programs, and other stakeholders.
- Interviewed staff from the Texas Board of Professional Engineers and Land Surveyors, Texas Commission on Environmental Quality, Comptroller of Public Accounts, Department of Information Resources, Texas Department of Transportation, Office of the Governor, and State Auditor's Office.



Sunset Staff Review of the  
*Texas Water Development Board*  
*State Water Implementation Fund for Texas Advisory*  
*Committee*

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