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**AGENDA ITEM MEMO**

**BOARD MEETING DATE:** July 23, 2024

**TO:** Board Members

**THROUGH:** Bryan McMath, Interim Executive Administrator

**FROM:** Kathleen Ligon, Interim Assistant Executive Administrator

**SUBJECT:** Texas Water Fund Implementation Plan

**ACTION REQUESTED**

This item is a briefing and discussion on the Executive Administrator’s Texas Water Fund implementation plan. No action is requested.

**BACKGROUND**

**Texas Water Fund Legislation**

In 2023, the 88th Texas Legislature passed Senate Bill (SB) 28 and Senate Joint Resolution (SJR) 75 providing for the creation of the Texas Water Fund. In addition, SB 30 authorized a one-time, \$1 billion supplemental appropriation of general revenue to the Texas Water Fund, contingent on enactment of SB 28 and approval of SJR 75 by voters. Proposition 6 (the proposition for SJR 75), creating the Texas Water Fund to assist in financing water projects in Texas, passed on November 7, 2023, with more than 77 percent in favor.

The Texas Water Fund is a special fund created in the state treasury outside the general revenue fund to be administered by the Texas Water Development Board (TWDB). SB 28 directs that the TWDB may only use the Texas Water Fund to transfer money to the following funds or accounts administered by the agency:

- The New Water Supply for Texas Fund, a new fund created by SB 28.
- The State Water Implementation Fund for Texas (SWIFT) and the State Water Implementation Revenue Fund for Texas, which support the SWIFT financial assistance program that provides low-cost financing for projects in the state water plan.
- The Clean Water or Drinking Water State Revolving Funds (SRFs), existing financial assistance programs that provide low-cost financial assistance for planning, acquisition, design, and construction of water, wastewater, reuse, and stormwater infrastructure.

**Our Mission** : **Board Members**

Leading the state’s efforts  
in ensuring a secure  
water future for Texas

Brooke T. Paup, Chairwoman | George B. Peyton V, Board Member | L’Oreal Stepney, P.E., Board Member  
Bryan McMath, Interim Executive Administrator

- The Rural Water Assistance Fund, an existing financial assistance program designed to assist small rural utilities in obtaining low-cost financing for water and wastewater projects.
- The statewide water public awareness account, a newly created account that will direct funds toward a statewide public awareness program.
- The Texas Water Development Fund II water financial assistance account, an existing program.
- The Texas Water Development Fund II state participation account, an existing program that enables the TWDB to provide funding and assume a temporary ownership interest in a regional water, wastewater, or flood control project when the local sponsors are unable to assume debt for an optimally sized facility.

Of the initial amount appropriated to the Texas Water Fund, the TWDB must allocate no less than 25 percent (\$250 million) to the New Water Supply for Texas Fund. The TWDB must also ensure that a portion of the money transferred from the fund is used for the following:

- a) water infrastructure projects, prioritized by risk or need, for
  - a. rural political subdivisions; and
  - b. municipalities with a population less than 150,000;
- b) projects for which all required state or federal permitting has been substantially completed, as determined by the Board
- c) the statewide water public awareness program
- d) water conservation strategies
- e) water loss mitigation projects

### Financial Assistance Program Demand

The TWDB continues to experience high demand across the agency's financial assistance programs. Since 2013 (considered as a reference year due to creation of the landmark SWIFT program), the agency has seen a significant increase in key performance metrics related to these programs. Total assets managed over that timeframe have increased three-fold from \$6.9 billion to \$20.9 billion, and the number of construction contracts managed has nearly doubled. From 2016 to 2023, the TWDB has delivered on average more than \$1.8 billion per year in financial assistance, a many-fold increase in the average annual amount compared with years past. Of the almost \$36 billion in financial assistance commitments since the agency's inception in 1957, nearly \$20 billion has been committed since 2013.

### SWIFT Program Demand

To date, the TWDB has committed almost \$11.5 billion in SWIFT program funding in support of 57 state water plan projects estimated to produce more than 1.7 million acre-feet of water supply. As of end of 2023 (the ninth funding cycle), we have closed on \$9.8 billion in funding. The original goal of closing on \$8 billion in state water plan project funding in the first decade of the SWIFT program has been exceeded by nearly \$2 billion. If all projected

closings occur in 2024, that goal will have been exceeded by approximately \$3.5 billion—or over 40 percent of the entire original 50-year goal of \$27 billion—in the first decade of the program.

The estimated capital costs to implement the 2022 State Water Plan are \$80 billion. About 977,000 acre-feet in municipal conservation strategies is recommended in 2070, of which 320,000 acre-feet is associated with water loss reduction activities at a capital cost of approximately \$3.8 billion.

### SRF Program Demand

For the last several years the Clean Water and Drinking Water SRF programs, both designed to meet regulatory compliance objectives, have been significantly oversubscribed, meaning that program demand has consistently exceeded the available program capacity.

	Clean Water State Revolving Fund		Drinking Water State Revolving Fund	
	Program Capacity	Funding Requested	Program Capacity	Funding Requested
2023	\$ 408,000,000	\$ 2,895,650,206	\$ 342,000,000	\$ 2,457,463,719
2024	\$ 460,382,300	\$ 3,113,517,275	\$ 435,066,830	\$ 3,255,535,628

### Drinking Water and Clean Water SRF State Fiscal Year 2025 Solicitation

To potentially meet the statutory directives in SB 28, in December 2023 the TWDB encouraged water and wastewater systems to submit Project Information Forms that included water conservation and water loss projects in response to the agency’s Drinking Water and Clean Water SRF State Fiscal Year 2025 solicitation. The intent was to use the solicitation to gauge demand for assistance that could be provided through the SRFs or other financial assistance programs eligible for Texas Water Fund funding. Information on responses to the solicitation is included below.

### **KEY ISSUES**

#### Stakeholder Feedback

To inform rulemaking and other implementation efforts, the TWDB sought informal stakeholder feedback through surveys, invitations for public comment at four regular Board meetings, and a dedicated Texas Water Fund email from January 18 to April 30, 2024.

The surveys included:

- Survey 1: Financial Assistance for Water Infrastructure Projects
- Survey 2: New Water Supply for Texas Fund
- Survey 3: Statewide Water Public Awareness Program

Additionally, we hosted a stakeholder meeting on March 20 in Austin as well as a Board work session in Lubbock on April 10.

In total, we received 127 responses to Survey 1; 97 responses to Survey 2; 88 responses to Survey 3; more than 60 email responses; and several comments at Board meetings and the Board work session. The feedback received was instrumental in drafting the plan below.

Specific stakeholder feedback related to general financial assistance and the statewide public awareness campaign included the following:

- Average median household income, rural designation, and household cost factor were the top three factors that should be considered when offering financial assistance in the form of a grant.
- Rural designation, “green” projects (including those that reduce energy or water usage), and household cost factor were the top three factors that should be weighed the most heavily when considering grant funding.
- Risk of loss of service for water systems, water conservation/water loss mitigation, and regulatory compliance for water systems were identified as the greatest non-flood water infrastructure-related risks or needs for rural communities.
- Water conservation/water loss mitigation, risk of loss of service for water systems, and regulatory compliance for wastewater systems were identified as the greatest non-flood water infrastructure-related risk or needs for municipalities with a population less than 150,000.
- Affordability was identified as the greatest challenge or barrier that rural and small communities face in implementing water infrastructure projects.
- Beyond a statewide water public awareness campaign, data visualization tools and K-12 educational resources and programming were identified in Survey 3 and comment letters as initiatives that should receive the highest priority in a statewide water conservation program.

### Administrative Rules

Administrative rules are not required to implement the Texas Water Fund itself; however, some rulemaking is necessary in programs that are eligible to receive funding. This rulemaking includes the following:

- Minor changes to the Rural Water Assistance Fund rules in 31 Texas Administrative Code Chapter 365
- Minor changes to the Water Loan Assistance Fund rules in 31 Texas Administrative Code Chapter 363

Also, new rules for the New Water Supply for Texas Fund, as a new subchapter in 31 Texas Administrative Code Chapter 363, will be proposed later this year.

## Response to Drinking Water and Clean Water State Revolving Fund State Fiscal Year 2025 Solicitation

The TWDB received 68 Project Information Forms for water conservation and water loss projects, totaling over \$607 million, in response to the 2025 solicitation. Two of these were in the Clean Water SRF with the remainder in the Drinking Water SRF. These included:

<b>Population of Entity</b>	<b>Number of Eligible Projects</b>	<b>Amount of Funding Requested</b>
1,000 or less	18	\$43,229,060
1,001 to 10,000	40	\$330,675,639
10,001 to 150,000	9	\$108,415,710
Greater than 150,000	1	\$125,000,000
<b>Grand Total</b>	<b>68</b>	<b>\$607,320,409</b>

All projects proposed would address water loss, which is generally considered a subset of “water conservation” activities. For water supply planning purposes (31 Texas Administrative Code § 357.10), water conservation is defined as practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water that may be presented as water management strategies, so that a water supply is made available for future or alternative uses.

### Implementation Plan

The Executive Administrator recommends the following Texas Water Fund implementation plan. The plan is intended to meet statutory directives and be responsive to stakeholder feedback; however, given the high number of demands for financial assistance, we would like to acknowledge that it does not address all needs for funding. This plan is intended to be flexible and is subject to change.

The Executive Administrator proposes to distribute Texas Water Fund funding as follows:

<b>Funding Description</b>	<b>Target Amount</b>
<b>Rural Water Assistance Fund</b>	
<i>100 percent grant for conservation/water loss projects from SRF solicitation (under 1,000 population)</i>	\$45,000,000
<i>90 percent grant/10 percent loan or local match for conservation/water loss projects from SRF solicitation (1,000 to 10,000 in population)</i>	\$130,000,000
<i>High risk or need projects (100 percent grant)</i>	\$20,000,000
<b>Rural Water Assistance Fund subtotal</b>	<b>\$195,000,000</b>
<b>Water Loan Assistance Fund</b>	
<i>70 percent grant/30 percent loan or local match for conservation/water loss projects from 2025 SRF solicitation (10,001 to 150,000 in population)</i>	\$90,000,000
Statewide water public awareness program	\$15,000,000
SWIFT program support	\$300,000,000
Potential bond leveraged funding through existing financial assistance programs	\$150,000,000
New Water Supply for Texas Fund	\$250,000,000
<b>Grand total</b>	<b>\$1,000,000,000</b>

The plan includes seven components:

1. Rural Water Assistance Fund

- a. \$45 million in financial assistance in the form of a grant for all water conservation/water loss projects that responded to the 2025 SRF solicitation for communities under 1,000 in population.
- b. \$130 million in financial assistance in the form of 90 percent grant and 10 percent local match or SRF-comparable rate loan for water conservation/water loss projects that responded to the 2025 SRF solicitation for communities between 1,001 and 10,000 in population.
  - i. Projects will be prioritized by disadvantaged and technical criteria identified in Attachment 1; this prioritization will be posted for public comment on July 23 and the Board will consider adoption of the final prioritized list at the August Board meeting.
  - ii. \$50 million in funding will be reserved for construction-ready projects that have substantially completed all state or federal permitting (see Attachment 1). The Board may bypass a higher scoring project, if necessary, to fulfill this allocation goal.
- c. \$20 million in funding for projects identified through other financial assistance program applications as high risk or need based on following:

- i. Legislative mandates
- ii. TWDB's financial risk scoring criteria
- iii. Regionalization of deteriorating systems
- iv. Start-up systems
- v. Population of service area less than 1,500
- vi. Household cost factor greater than 3 percent or qualifies as disadvantaged
- vii. Significant compliance issues/regulatory agreed orders

2. Water Loan Assistance Fund

- a. \$90 million in financial assistance in the form of 70 percent grant and 30 percent local match or SRF-comparable rate loan for water conservation/loss projects that responded to the 2025 SRF solicitation for communities between 10,001 and 150,000 in population.
  - i. Projects will be prioritized by disadvantaged and technical criteria identified in Attachment 1; this prioritization will be posted for public comment on July 23 and the Board will consider adoption of the final prioritized list on August 15. [Note: The prioritization does not include the single project received from an entity over 150,000 in population since the Board will be considering the same project for a commitment through the SWIFT program.]
  - ii. \$25 million in funding will be reserved for construction-ready projects that have substantially completed all state or federal permitting (see Attachment 1). The Board may bypass a higher scoring project, if necessary, to fulfill this allocation goal.

3. SWIFT Program Support

- a. A transfer from the Texas Water Fund to SWIFT not to exceed \$300 million to allow the financing of nearly \$1.7 billion through State Water Implement Revenue Fund for Texas bonds to be issued this fall. The ability to transfer money from the Texas Water Fund represents an opportunity to approve and provide commitments to all eligible applicants while letting the SWIFT balance remain at its current level to generate additional investment return for future leveraging capacity. It will also help meet Texas Water Fund statutory priorities by supporting water infrastructure projects for rural political subdivisions and municipalities with a population less than 150,000, along with water conservation strategies.

4. Statewide Water Public Awareness Program

- a. \$10 million in grant funding for a contracted campaign
- b. \$5 million reserved for future TWDB-led opportunities to invest in K-12 educational resources and programming, data visualization tools, or other related initiatives.

5. New Water Supply for Texas Fund
  - a. \$250 million for financial assistance to be determined upon adoption of rules by winter 2024/2025.
6. Potential bond-leveraged funding through existing state or federal financing assistance programs
  - a. \$150 million
7. Administrative costs
  - a. Up to 2 percent of the fund may be used by the TWDB to pay the necessary and reasonable expenses of administering the fund.
  - b. Authority to pay or reimburse administrative costs could be delegated the Executive Administrator with a requirement to report those costs to the Board.

## Implementation Timeline

### July 23, 2024

- Briefing and discussion on the Texas Water Fund Implementation Plan
- Board consideration of adoption of Rural Water Assistance Fund (RWAFF) rules
- Board consideration of SWIFT program commitments for financial assistance
- Board consideration of Texas Water Fund transfer to SWIFT
- Invitations to apply sent to entities with high risk projects
- Draft prioritization of RWAFF and Water Loan Assistance Fund (WLAFF) water loss projects posted for public comment

### August 2024 Board meeting

- Board consideration of WLAFF rule proposal
- Board consideration of adoption of RWAFF and WLAFF water conservation/water loss project prioritization
- Invitations to apply sent to RWAFF water conservation/water loss projects
- Board consideration of first high risk project commitments

### Fall 2024

- Board consideration of adoption of WLAFF rules
- Invitations to apply sent to WLAFF water conservation/water loss projects
- Board consideration of New Water Supply for Texas Fund rule proposal
- Board consideration of statewide water public awareness campaign contract

### Winter 2024/2025

- Board consideration of RWAFF and high risk project commitments
- Board consideration of adoption of New Water Supply for Texas Fund rules

### Spring 2025

- Board consideration of WLAFF project commitments



Board members

July 23, 2024

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**RECOMMENDATION**

This item is for briefing and discussion only.

Attachment(s):

1. Water Loss Project Prioritization and Construction-Ready Reserve

# Attachment 1: Water Loss Project Prioritization Criteria and Construction-Ready Reserve

<u>Criteria</u>	<u>Points</u>
1. Annual Median Household Income (AMHI)	
Service Area AMHI is less than or equal to 50% of the State AMHI.....	40
Service Area AMHI is less than or equal to 65% but not less than 50% of the State AMHI.....	30
Service Area AMHI is less than or equal to 75% but not less than 65% of the State AMHI.....	20
Service Area AMHI is greater than 75% of the State AMHI.....	0
 2. Household Cost Factor	
Household Cost Factor of the project is equal to or above 2%.....	5
Household Cost Factor of the project is below 2%.....	0
 3. Project Addresses Real Water Loss	
Project addresses any real water loss.....	20
 4. Type of Water Loss Addressed	
Project addresses the type of water loss identified as above the threshold (31 TAC § 358.6 (e)) in the water loss audit.....	15
 5. Rural Applicants	5
(A) a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code or a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, no part of the service area of which is located in an urban area with a population of more than 50,000;	
(B) a municipality:	
(i) with a population of 10,000 or less no part of the service area of which is located in an urban area with a population of 50,000 or more; or	
(ii) located wholly in a county in which no urban area has a population of more than 50,000;	
(C) a county in which no urban area has a population of more than 50,000; or	
(D) an entity that:	
(i) is a nonprofit water supply or sewer service corporation created and operating under Chapter 67 of the Texas Water Code, a district or authority created under Section 52,	

Article III, or Section 59, Article XVI, Texas Constitution, a municipality, county, or other political subdivision of the state, or an interstate compact commission to which the state is a party; and

(ii) demonstrates in a manner satisfactory to the Board that the entity is rural or the area to be served by the project is a wholly rural area despite not otherwise qualifying under Paragraph (A), (B), or (C).

## **Maximum Number of Points**

**85**

### **6. Tiebreaker**

In the event of a tie in the scoring, priority will be given to the system serving the fewest number of service connections.

## **Construction-Ready Reserve**

Projects are considered construction-ready if

1. an applicant requests funding only for construction activities (i.e., they are not seeking planning and design funding from the TWDB) and can submit an approvable Engineering Feasibility Report (EFR) with their financial application; or,
2. an applicant has all applicable permitting aspects of the project (e.g., acquisition of water rights, Certificate of Convenience and Necessity (CCN), TCEQ approval and completion of piloting for the project, TCEQ wastewater discharge permit for wastewater treatment plant construction or wastewater reuse authorization) and an environmental review has been substantially completed<sup>1</sup>.

The Board may bypass a higher scoring project, if necessary, to fulfill this allocation goal. If an applicant's financial application does not meet this definition of construction-ready, and the project was brought in under this bypass provision, TWDB staff will hold completing the application review of this project until other higher scoring projects have been invited to apply are committed. The project will be reconsidered in priority order, provided funds remain available.

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<sup>1</sup> Applicant will submit sufficient information with the financial application to support one of the three potential responses: 1) a Finding of No Significant Impact (FNSI), Categorical Exclusion (CE), a Record of Decision (ROD), or an environmental determination prepared by another entity; 2) the project meets the criteria to receive a categorical exclusion in compliance with TWDB rules; or 3) the applicant can submit an environmental report that documents coordination with other agencies has proceeded sufficiently to determine that no major issues remain.