



Senate Committee on Water, Agriculture, and Rural Affairs

Senator Charles Perry, *Chairman*

Members: Senator Kelly Hancock, Vice-Chair; Senator César Blanco; Senator Pete Flores;
Senator Roland Gutierrez; Senator Nathan Johnson; Senator Lois Kolkhorst; Senator Kevin Sparks; Senator Drew Springer

March 1, 2024

The Honorable Brooke T. Paup
Chairwoman, Texas Water Development Board
1700 N. Congress Avenue
P.O. Box 13231
Austin, Texas 78701
Delivery via Email

Chairwoman Paup,

By voting to constitutionally dedicate the Texas Water Fund (TWF) and the New Water Supply for Texas Fund (NWSTF) and to seed the funds with \$1 Billion in November of 2023, Texas citizens overwhelmingly endorsed the Texas Legislature's vision for the funds' purpose and operation. It is imperative that the trust placed in state leadership by the voters for this purpose is respected, and that the TWF's primary mission--providing more water for all Texans--is accomplished. As per your request, I write to you and the Texas Water Development Board (TWDB) as the author of Senate Bill 28 and Senate Joint Resolution 75, the legislation creating the funds passed during the 88th Regular Session, to memorialize the Legislature's intent as it relates to how the NWSTF should be used.

The primary purpose of the NWSTF is to finance the development and acquisition of new water supply for all Texans, reducing the state's over-dependence on fresh groundwater sources that are depleting beyond recovery. The NWSTF is intended be used solely to finance the development and acquisition of new water supply, with a target in mind of 7 million acre-feet of new water supply to be achieved for Texas by the end of 2033.¹ This means water supply that is truly a new input into the state water cycle. In my respectful opinion, this is a new concept in Texas water policy conversations, or at least one that is not well understood.

For purposes of implementing the NWSTF, new water supply is water that: (1) is not currently used for a beneficial purpose, or is currently unavailable for such use, in Texas due to water quality issues, technological incapacibilities, and/or the location of its source; and (2) would, if

¹ Tex. Water Code § 15.153(a).



introduced for beneficial use, add to the net total volume of water supply available to all Texans as determined by the TWDB. The creation of the NWSTF as a separate fund from the TWF and its other appended funds is specifically intended to preempt any attempt to use the NWSTF for a purpose other than the acquisition and development of new water supply in keeping with this understanding.²

Water conservation efforts do not fall within the scope of new water supply development and acquisition. Water conservation is the reduction of water consumption, loss, and waste via improved efficiency, recycling and reuse.³ By design, water conservation projects were not included among the types of projects for which NWSTF financing is allowed by SB 28.⁴ Other avenues for financing water conservation efforts exist in SB 28 and SJR 75 separate from the NWSTF.⁵

The movement of existing water supply from one community in or region of Texas to another does not constitute the addition of net new water supply volume for all of Texas. Moving water around within the state has a net zero impact on the state's total water supply; taking one Texan's water supply for the benefit of another Texan is not new water supply for the state, but rather only new water supply for the recipient. It is not the intent of this letter to generally encourage or discourage the movement of existing water supply within Texas; indeed, doing so may be a necessity to ensure adequate water supply is available to some Texans until such time that the acquisition and development of new water supply sources can satiate that thirst in its own right. NWSTF financing should be applied to infrastructure designed to move water around the state only when and to the extent necessary to deliver new water supply developed or acquired with NWSTF assistance to its area of intended use.⁶

Specific opportunities for developing new water supply consistent with the legislation's intent include: (1) marine desalination; (2) brackish groundwater desalination;⁷ (3) produced water

² See generally *id.* Subchapter C-1.

³ *Id.* § 15.001(9)(B).

⁴ See *id.* § 15.153(b)(1).

⁵ See generally *id.* Chapter 15.

⁶ *Id.* § 15.153(b)(1)(D).

⁷ *Id.* § 15.153(b)(1)(A).



treatment;⁸ and (4) the acquisition of water through regional and nationwide coordination with other states via interstate compacts and other legal vehicles.⁹

NWSTF financing should not be used for experimental, unproven technologies, or proposals that will not yield new water supply in volumes sufficient to justify the funds invested. In developing rules and processes to inculcate the factors outlined in SB 28 for consideration when evaluating requests for NWSTF financing,¹⁰ the TWDB should ensure a general practice of determining: (1) whether the proposals offer firm commitments of new water supply estimated using proven, well-grounded scientific understandings and principles; and (2) the cost of the proposals on a per capita basis estimated using the number of Texans reasonably intended to benefit from them. In short, NWSTF funds must be used responsibly.

There is no requirement in SB 28 or SJR 75 that NWSTF financing be used only to support projects included in the state water plan. This is by design. I anticipate that NWSTF financing will eventually support significant projects yielding large volumes of new water supply that will be incorporated into the state water plan; however, the nature of some of these potential projects is such that legislative conversations not typically part of the state water planning process may need to occur before the projects can be authorized. Additionally, due to the potential projects' statewide scope and the NWSTF's focus on large acre-footage projects, a broader, more coordinated approach than what the regionally driven state water planning process can initially provide may be necessary. If those conversations produce the tangible results I expect, the projects pursued can be included in the next state water plan or an amendment to the current plan. Via this method, these projects should become eligible for additional financing from the State Water Implementation Fund for Texas at that time.

To be clear, the legislative intent is not to move away from regional water planning generally, but rather, to look at the regions in a statewide, cohesive manner. Water supply is expensive, and with a more coordinated, statewide approach, I believe the dollars will stretch further toward solving the challenges of providing new water supply for all Texans. A proper statewide water

⁸ *Id.* § 15.153(b)(1)(B).

⁹ *Id.* § 15.153(b)(3).

¹⁰ *Id.* § 15.154(b).



supply project will develop new water supply resources for an area using the most efficient energy sources and methods of distribution practicable.

Texans can neither survive nor thrive without sufficient water. Few challenges our state faces are as consequential as ensuring adequate water supply for all Texans. Meeting this challenge will require a degree of original thinking and culture change. I am confident Texas is up to the challenge.

I am deeply appreciative of the hard work you and the TWDB are doing to implement the TWF, the NWSF, and the other funds created by SB 28 and SJR 75 in a manner consistent with the legislation's original intent. I especially appreciate the productive dialogue you and your staff have carried on with my office and I since the earliest stages of the legislation's development. If I can be of assistance in any other way, please do not hesitate to contact me or my committee office.

Warm Regards,

A handwritten signature in black ink that reads "Charles Perry". The signature is written in a cursive, flowing style.

Senator Charles Perry, Chairman
Texas Senate Committee on Water, Agriculture, and Rural Affairs

CP:ap

CC (*Delivery via Email*):

The Honorable Dan Patrick, Texas Lt. Governor
The Honorable Dade Phelan, Speaker of the Texas House of Representatives
Representative Tracy King, Chairman of the Texas House Committee on Natural Resources

