

# **LEAGUE OF *independent* VOTERS OF TEXAS**

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**Submitted to the Texas Water Development Board on September 1, 2014**

## **COMMENTS BY THE LEAGUE OF INDEPENDENT VOTERS OF TEXAS ON PROPOSED RULES FOR TWDB PRIORITIZATION OF SWIFT AND SWIRFT PROJECTS (HB 4)**

The League of Independent Voters of Texas is a newly-formed Texas non-profit membership organization dedicated to the removal and avoidance of public and private abuses of citizen rights, our economic sustainability and our natural resources; to the restoration and preservation of local rights; and to voter education and the promotion of electoral competition. Our membership includes citizens of both rural and urban Texas counties who may appear to be at odds over water, but who share these common concerns. These comments on the proposed rules to implement HB 4 and Prop 6 (referred to herein as “SWIFT and SWIRFT”) are offered on behalf of the League.

### Summary

The League formally opposed the passage of HB 4 and Proposition 6, largely because of the potential impacts of both the legislation and the constitutional amendment on the League’s constituency, some obvious and some hidden. One of the first formal actions of the League was to publish a white paper on its concerns in September 2013; its original concerns are still viable. Our message remains the same: Conserve first, then control growth (through free-market principles designed to make growth pay for itself, rather than through public subsidies), but not necessarily in that order. If both concepts are followed, wise decisions will be made, sustainability and affordability will be achieved, and our natural state treasures will be preserved.

As the Texas Water Development Board prepares to adopt rules to implement HB 4 and Prop 6 (referred to herein as “SWIFT and SWIRFT”), in particular as it designs the prioritization process for funding projects, we appreciate the agency’s diligence in seeking public input. Now it is time for the Board to exercise the same, or greater, diligence in its final deliberations about the proposed rules.

One overarching concern of the League is worth mentioning. The regional planning process for water is only about fifteen years old --- in the scheme of

things, it might be considered in its infancy, given the magnitude of “planning water” for a state as big and as diverse as Texas. Further, the recommendations of the regional planning groups from 2011 and the recommendations of the Texas Water Development Board in the 2012 state water plan formed the basis of a \$2 billion expenditure by Texans and the complete reorganization of TWDB. The question has to be asked whether the regional water planning process is sufficiently mature to support using it as the sole basis for funding decisions, or at least for the first round of funding decisions.

Specifically, we were told we must fill an 8.3 million acre-foot gap between water supply and water demand by 2060, and that we must spend \$53 billion to do it. To say that the public trust has been invoked in answer to such gargantuan threats is an understatement. The public can’t possibly vet those predictions; our public officials must do so honestly and without bias. What gets “planned” is a far cry from what should get built --- the planning process should *not* be the tail wagging the dog of financing decisions that will forever affect the future of Texas.

We hope Board members will seriously consider the important points raised in our comments on the draft rules. Our comments are not as specific as some might be, but rather they are intended to inform the Board’s judgment. In our view, the TWDB must be asked by the public whether it has done all it can, and plans to do all it can to implement the Legislature’s espoused intent in passing HB 4 and asking voters to amend their State Constitution. The TWDB must also ask itself if its rules fairly represent the promise of SWIFT and SWIRFT to *all* Texans, current and future.

#### Resources Used in Preparation of Comments

The League wishes to acknowledge and recommend two sources in particular which influenced the preparation of these comments. First, the Texas Center for Policy Studies report entitled “Learning from Drought: Next Generation Water Planning for Texas”, dated May 2014 (“TCPS Report”), provides insights into how Texas might assure its water planning process is state-of-the-art, which will in turn inform TWDB’s financing efforts under SWIFT and SWIRFT. We highly recommend that the Board read this report for insights into the prioritization process.

The TCPS Report concludes with a statement about planning that is equally applicable to what TWDB must accomplish in its prioritization rules and in

spending the SWIFT and SWIRFT funds: “A good balance between bottom up projections and top down guidance is needed to develop demand projections that reflect both the local and regional goals and the realities of overall state growth and state interests. Without such a balance, demand projections can become more like wish lists than valid projections and large urban regions are likely to dominate rural interests.”

Second, we acknowledge the influence of a paper entitled “Sustainability and Water for Texas” by Jim Blackburn, which was first delivered in March 2003 but which has stood the test of time with its conclusion then that “[W]ater in Texas defines the challenge of sustainability.” Although we share Mr. Blackburn’s fear that Texas institutions are not up to the challenge, we continue, over ten years later, to demand that they step up. One effect of Prop 6 was to raise public awareness of water issues and to tie that awareness to how its rainy day funds will be spent. Our politicians and our state agencies should be very aware they have awakened a sleeping giant.

#### Achievement of Legislative Intent

The legislature considered the prioritization process for SWIFT and SWIRFT financing of water management strategies included in the state water plan as essential to ensuring that \$2 billion of state funds are managed for the *greatest public benefit*. TWDB prioritization rules as promulgated must therefore assure citizens of Texas that the legislature, and in turn TWDB, extended its concern to *all* Texans.

Achieving the “greatest public benefit” must not result in choosing winners and losers, as might be the case if the legislature had told TWDB, for example, to ensure “the *greater good*,” leaving TWDB to subjectively make the determination of which constituencies are most “worthy” as opposed to those projects which should be prioritized for objective reasons.

Further, we urge that TWDB’s SWIFT and SWIRFT rules should assure the *greatest public benefit* by prioritizing public finance of “sustainable development.” Included in sustainable development, we urge that your rules for prioritizing taxpayer dollars spent on water projects include two prime objectives, which we

presume must have been included in the legislature's vision of the "greatest public benefit."

First, the biggest challenge to TWDB as you implement rules that determine what gets built for water and what does not, is sustainability. In short, in order to be "sustainable," our society must not destroy the natural, or ecological, systems that sustain and nurture us. Rather, we must make decisions about human growth and development on the basis of what will preserve and protect our natural systems.

Not coincidentally, the Legislature has articulated this duty as that which is entrusted to groundwater conservation districts *vis a vis* our groundwater resources. Our surface water resources are directly owned by the State, which must also signal a recognition that such resources are intended to be conserved and protected. In addition to our surface water and groundwater resources, the health of our bays and estuaries must be preserved and protected. Ultimately, the duty of TWDB must be to recognize that all three natural systems are inextricably interwoven --- to exploit one or deprive one has repercussions for the others. And those impacts will be suffered by all Texans.

Second, the prioritization process must achieve affordability. Projects must be paid for by ratepayers and taxpayers in order for the SWIFT and SWIRFT dollars to be returned to the state to grow to the \$26 billion said to be the necessary state subsidy to fill the \$53 billion gap.<sup>1</sup> Asking ratepayers and taxpayers to do so implicitly assumes that it is appropriate to do so --- that the project is needed to address whatever municipal, agricultural or industrial demand it was designed to meet, that it is feasible, that it is cost-effective, that it is realistic as a future water supply and that it does not irreparably harm or risk irreparable harm to an integral element of the ecosystem. All of these factors must be quantified in the prioritization process.

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<sup>1</sup> References to the projected costs of the 2012 state water plan strategies are not intended to indicate acceptance by the League of this price tag; in fact, we believe these comments will illustrate the need to further refine the projected costs in the current planning cycle.

In order to evaluate all of these factors, we believe that at least one element of sustainability and affordability that has been missing up to this point is what might be called the “true cost” or the “full cost” of development, as it relates to the development of water or other finite natural resources. What is the “true cost” of risking a rural community’s future viability if its local water supply is compromised to satisfy distant *projected* growth that might not materialize or which might be addressed differently or at least less aggressively? What is the true cost to our rivers, streams and springs if groundwater is pumped so aggressively that a gaining (from groundwater input) river turns into a losing river? What is the full cost of a project that compromises our bays and estuaries, and the robust economy they promote? You cannot rob Peter to pay Paul without paying a cost, but this “cost” is lost in the “projected costs” which TWDB seems ready to assess in the prioritization process. The prioritization process must take these costs into account in scoring projects.

Further, by definition “the greatest public benefit” must exclude the priorities of special interests from being used as the priorities of those who control public monies, in this case TWDB. Prioritization rules must not be “just” a roadmap for public dollars used to support development and not “just” public dollars to subsidize or incentivize growth. We suggest that prioritizing projects that provide such private benefit when alternative projects would provide the same public benefit as the prioritized project, should be judged questionable when scrutinized under constitutional lending of credit criteria.

### Specific Comments

The League commends TWDB’s public statements to the effect that the 10% and 20% set asides for funding rural and agricultural conservation, and conservation or reuse projects, respectively, are “floors” not “ceilings,” and for including this statement in the preamble to the SWIFT and SWIRFT rules.

The League urges that such rural and agricultural conservation projects, as well as conservation projects, including agricultural irrigation projects, or reuse projects, if otherwise eligible, be given an automatic highest priority for funding from

SWIRFT or other bond programs, with support from SWIFT.<sup>2</sup> We also urge that up to 100% of any allocation of funds from SWIFT and SWIRFT during any funding cycle be eligible for these purposes. In particular, we urge this result during at least the first round of financing by TWDB, while the 2012 state water plan is in effect and at least until population demand projections are further refined in the plan.

Along these lines, we urge that TWDB work to assign capital costs to those conservation projects that might otherwise be included in the state water plan but not prioritized for SWIFT and SWIRFT because they traditionally have not lent themselves to debt financing. Clearly overhaul of actual distribution systems --- fixing leaky municipal pipes, a costly waste of water --- qualifies for debt financing. Whether other types of water efficiency projects qualify as capital assets for debt financing is a complicated issue. However, we believe the bottom line is that efficiency programs with a defined water yield are an investment in a capital asset—water supply—and should thus qualify for SWIFT and SWIRFT financing. TWDB should strive to make this happen.

The League believes that further refinements are warranted in the state water planning process with respect to actual future demand for municipal water strategies designed to serve huge populations.<sup>3</sup> Municipal supply projects other than conservation are by far the most expensive, to both people, the environment, and our future ability to grow food, as well as the most subject to manipulation and mistake in projections of demand. They also are the most vulnerable to enrichment of special interests at the expense of ratepayers and ordinary citizens who must repay the financing, whether the project was needed or not. Such projects also become disincentives to conservation.

We believe that the Texas water planning process can and should be reformed to produce a more sustainable, cost-effective and environmentally sound state

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<sup>2</sup> The League understands the operation of SWIFT as support for SWIRFT or other bond programs, rather than as a direct source of funds for financing water projects. Any shorthand references to the respective SWIFT and SWIRFT structures in these comments should not indicate otherwise or negatively reflect on the substance of the comments; they are used in the interests of brevity only.

<sup>3</sup> The TCPS Report credibly argues that, with more reasonable demand projections and better use of conservation and drought management, the demand/supply gap in 2060 is less than one-half that predicted by the current 2012 State Water Plan issued by TWDB. That is, rather than an 8.3 million acre-feet/year gap between demand and supply in 2060, a more realistic gap is about 3.3 million acre-feet/year.

water plan --- in effect, a “state of the art” water plan. If such refinements are made, the prioritization of projects at the regional planning level will change, even to the point of eliminating some huge municipal supply projects.<sup>4</sup> We therefore urge that TWDB refrain, in at least the first two funding cycles of SWIFT and SWIRFT, from funding water projects that are designed to meet projected municipal water supply needs based on future population demand that will not materialize for decades.<sup>5</sup>

Specifically, we urge TWDB to favor conservation first, then near-term projects, especially those needed to satisfy emergency water supply needs due to drought, with long-term municipal supply projects being postponed at least until the 2017 state water plan re-evaluates the need for and sizing of such projects before financing is committed.

Further, we urge that scoring, and ultimately prioritization for any such projects, be based on an evaluation that gets the project’s true cost “right” in *any* funding cycle. Only when the local impacts and damage of a project, like a reservoir or a pipeline transfer of the lion’s share of stored water in an aquifer, are incorporated into determining the “full cost price” of those projects will the state have kept its promise of delivering projects for the “greatest public benefit.”<sup>6</sup> The League is confident that if the “full cost price” of the mega-projects for which SWIFT support will surely be sought is fairly evaluated and quantified as part of the scoring process, the scores for any benefit of such projects will surely be reduced if not eliminated by its negative impacts. When the pitfalls of over-estimating future demand is factored in to the “full cost price,” there is no alternative to going forward very slowly, if at all, with mega-projects designed to foster population growth.

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<sup>4</sup> For example, the TCPS Report shows that the projected 2060 demand could be reduced by 3.5 million acre-feet per year using reasonable municipal demand and conservation projections in Region C. Closing the Region C demand/supply gap would eliminate the need for the Marvin-Nichols Reservoir, for a cost-savings of \$3.3 billion, which does not take into account the savings in “true costs” of such a project as well as the avoidance of the ugly precedent of TWDB forcing one region’s water plan on another region without its consent.

<sup>5</sup> To be clear, the League does not include in this suggested prohibition any conservation or reuse projects that will, in effect, provide an alternative to the mega-projects like reservoirs and groundwater transfers to which we object in the face of uncertain demand, prohibitive “true cost” and therefore uncertain need.

<sup>6</sup> Mr. Blackburn illustrated his case with a simple question that was pertinent to his examination of the now-defunct LCRA/SAWS water supply plan: “What is the value of a 40% reduction in the productivity of San Antonio Bay?” Central Texans would illustrate their concerns about excessive groundwater withdrawals in similar terms of reduced rural productivity as well as negative effects on surface water such as the Colorado River.

In recognition of the powerful effect “conserving first” will have both on future demand projections as well as in limiting the need for mega-projects such as reservoirs and groundwater transfer projects, we believe the scoring process should not only be adjusted to *reward* conservation-minded municipalities that have instituted state-of-the art water saving strategies, but also to *penalize* those that have not instituted conservation by making the creation of essentially “new” water through such mega-projects ineligible for SWIFT support, in particular any component of state participation in the project under SWIFT.

### Conclusion

The primary concerns of the League with the SWIFT and SWIRFT rules are (1) that rural communities not be denied future viability but rather are afforded the opportunity to thrive and to leave a legacy for future generations that not only includes the essence of what makes Texas great, but ensures that food can be grown near municipalities, or anywhere in the state, (2) that urban and rural populations alike are asked to pay only for cost-effective projects that have been vetted by a prioritization process that takes into account the possibility that municipal demand over the next fifty years has been overstated,<sup>7</sup> (3) that such projects do not become disincentives to conservation; and (4) that the negative as well as expected positive impacts of projects are taken into account in order to maximize both public benefit and protection of our state’s most precious – and irreplaceable---resource.

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<sup>7</sup> That is, projects that are selected and built have to be paid for --- by ratepayers, by taxpayers and by borrowers.