TEXAS CENTER
FOR POLICY STUDIES

Financing a Sustainable Water Plan for Texas

In a series of three guest blogs for the Texas Center for Policy Studies, Sharlene Leurig, Water Program Director for CERES, discusses the details of Proposition 6, the water project financing measure approved by Texas voters on November 5th. Proposition 6 amends the Texas constitution to appropriate $2 billion from the state's Rainy Day Fund to seed a new water infrastructure loan fund directed to water supply projects included in the State Water Plan.

Sharlene's three posts examine how this new fund will work (in concert with House Bill 4, passed in the recent session of the Texas legislature) and what it could achieve—or fail to achieve—in terms of Texas' water security. The first post focuses on the mechanics of the fund and what choices the Texas Water Development Board (TWDB) is likely to face in ensuring that the $ 2 billion appropriation is used for maximum public benefit. The second post looks at how administration of the fund will be affected by the new project prioritization process authorized by House Bill 4, the companion legislation passed earlier this year. The third post explores whether and how the fund can be used to support water conservation projects.

Installment 1: Proposition 6 and the Mechanics of Funding State Water Plan Projects

This post examines how the new infrastructure loan fund will operate and the choices that will need to be made to ensure that the funds are allocated for maximum public benefit. It explores the tensions between using the new fund for "state participation" in longer-term, big-ticket projects, such as reservoirs and pipelines, versus distributing funds more widely to smaller, near-term projects across the state. (*Note: the following discussion draws on an excellent analysis of the mechanics of Prop 6 and differences with existing financing mechanisms by the Energy Center at the University of Texas School of Law*.)

The 2012 State Water Plan estimates that the cumulative capital cost of all recommended water management strategies through 2060 would be $53.1 billion, only $26 billion of which the Regional Planning Groups reported could be financed through local capacity. As part of the 2012 Plan, TWDB recommended that the Legislature "develop a long-term, affordable, and sustainable method to provide financing assistance for the implementation of the state water plan."

This recommendation was taken up by the Legislature in the 2013 session in three pieces of legislation: House Bill 4, House Bill 1025 and Senate Joint Resolution 1. Collectively, these bills: restructured the Texas Water Development Board (see TCPS's post on the restructuring here), established the State Water Implementation Fund for Texas (SWIFT);

and sent voters a ballot proposition to approve the transfer of $2 billion from the Economic Stabilization Fund ("Rainy Day Fund") to SWIFT. With Proposition 6 approval, the $2 billion will be permanently transferred from the State Treasury to a trust held by the state on behalf of the Texas Water Development Board, to be used exclusively for the financing of recommended water management strategies in the State Water Plan.

TWDB is the state's water infrastructure financing agency, providing $14.3 billion in loans for water and wastewater infrastructure across the state over the last 56 years. TWDB makes use of its superior credit rating and low borrowing costs to raise money through bond sales. It then lends that money to local sponsors of water projects at a lower interest rate than what would be available to the local if it sold its own bonds in the open market. For very small systems, the subsidized lending made available by the TWDB is especially critical as they have fewer options for borrowing money.

Despite this substantial amount of financing activity at the state level, Texas water infrastructure needs have been growing, while TWDB's lending capacity has been limited by Article III, § 49 of the state Constitution, which generally prohibits the state from issuing debt without voter-approved expansion of constitutional authority.

In 2011, Texas voters approved a constitutional amendment granting TWDB authority to issue up to $6 billion worth of debt for the Texas Water Development Fund II. One of the issues in the Prop 6 election was the difference between the new Prop 6 funding and the previously authorized $6 billion. The answer generally comes down to the state's constitutional debt limit.

While bonds sold under this new authority were considered "self-sustaining" they are counted against the debt limit of the state—which prohibits new bond issuances when the percentage of debt service payable by general revenue in any fiscal year exceeds 5% of the average unrestricted general revenue for the past three years. This can theoretically limit the ability of the TWDB to issue future bonds. So while the TWDB technically could have $6 billion of active market debt, it is constrained in its own debt issuance by the larger set of debt obligations undertaken by other Texas agencies and by the state's constitutional debt limit.

Thus, H.B. 4 and Prop 6 seek to create a self-sustaining funding mechanism for water supply projects that can grow beyond the initial $2 billion allocation without bumping up against the state's debt limit. That is, the $2 billion can be used to fund much more than $2 billion in capital costs, but the total amount of financing will depend on how the funds are used.

Table 1 provides a definition of some terms that are key to understanding the specifics of the new financing mechanisms.

Table 1. Glossary of Key Terms (adapted from Investopedia)

Term	Brief definition
Revolving Loan Fund	A fund that is structured so that repayments can be used to make more loans. As borrowers repay their loans, this money is made available to new applicants. A fund has fully revolved when all of the original principal lent has been repaid
Bond	A debt investment in which an investor loans money to an entity (corporate or governmental) that borrows the funds for a defined period of time at a fixed interest rate. Bond buyers are repaid both principal and interest
General Obligation Bond	A municipal bond backed by the credit and "taxing power" of the issuing jurisdiction rather than the revenue from a given project. Also called a "GO" bond. Most bonds issued by the Texas Water Development Board have been GO bonds.
Revenue Bond	A municipal bond supported by the revenue from a specific project, such as a wastewater treatment plant or reservoir. Revenue bonds are municipal bonds that finance income-producing projects and are secured by a specified revenue source. Most locally-financed water infrastructure in the United States is financed by revenue bonds repaid by payments from water or wastewater system customers.
Credit Enhancement	A method whereby a borrower attempts to improve its debt or credit worthiness. Through credit enhancement, bond buyers are provided with reassurance that the borrower will honor the obligation. Credit enhancement can take many different forms, including additional collateral, insurance, or a third party guarantee to pay a defined amount of principal and interest. Credit enhancement reduces credit/default risk of a debt, thereby increasing the overall credit rating and lowering interest rates for the borrower.
Deferred principal/interest loans	Loans can be structured using terms that allow the borrower to defer payments for a specified period of time. Lending terms can defer principal payments, interest payments or both. For example, a loan with a 10-year deferred principal period would mean that for the first decade, the borrower would pay only interest on the amount borrowed, and not begin paying down the principle until after the 10-yr period.
Leverage	Leverage is a technique for multiplying limited funding by using those funds as collateral for debt issued. For many years, the Texas Water Development Board has used leverage to amplify the amount of funding it receives from the Environmental Protection Agency under the EPA's State Revolving Funds for water and wastewater projects. TWDB issues bonds secured by its State Revolving Fund allocation. The proceeds of those bonds are then used to lend money to local water project sponsors to comply with drinking water and surface water standards. The money received from the EPA is invested by the TWDB in low-risk securities, like Treasury bonds. That investment is pledged as collateral to bond buyers, thereby securing a strong credit rating and low borrowing cost for TWDB. In addition, the interest gained by its investments is used to subsidize the interest rate for TWDB's borrowers. Through leverage, TWDB is able to make more money available to its borrowers

SWIFT AND SWIRFT

Prop 6 enables the TWDB to expand the amount of loans available to local sponsors applying for financial support for water supply projects, by creating two separate but related funds: 1) the State Implementation Fund for Texas (SWIFT) and 2) the State Water Implementation Revenue Fund for Texas (SWIRFT). Though the latter has received less

media attention, it is actually the more important of the two when it comes to the matter of growing the $2 billion seed fund.

SWIFT exists to subsidize loans made by the TWDB to local sponsors of water supply projects—it is simply a dedicated pool of money to allow TWDB to lower the effective interest rates paid by its borrowers. SWIFT can only be used to subsidize lending through five of TWDB's funding programs. Four of these programs are briefly described in the table below; the fifth, SWIRFT, is described in Table 2.

Table 2. TWDB Water Financing Programs

Eligible TWDB Program	**Purpose of Program**
Water Infrastructure Fund	Subsidized and deferred loans for state political subdivisions and water supply corporations, for projects in SWP or approved regional water plans
Rural Water Assistance Fund	Loans for political subdivisions and nonprofit water supply corporations, for infrastructure or for consolidation or regionalization
Agricultural Water Conservation Fund	Loans for political subdivisions, colleges, interstate compact commissions and nonprofit water supply corporations, for conservation projects
State Participation Program accounts in Texas Water Development Fund II	Deferred interest obligations to repurchase TWDB's temporary ownership interest in facilities, for political subdivisions and water supply corporations

These four programs are funded by the TWDB through the sale of general obligation bonds, which are then used to create revolving loan funds (meaning that as borrowers repay their debts to the board, the fund is replenished to be made available to other beneficiaries).

At its heart, SWIFT is a means of subsidizing these revolving loan funds. There are four types of subsidy SWIFT can provide: 1) low-interest loans (TWDB may lend at as little as 50% the rate of interest at which it borrows); 2) longer repayment terms for loans; 3) incremental repurchase terms for projects in which the state owns a share; and 4) deferral of loan payments. For example, under Option 1, if TWDB can borrow money at 3%, SWIFT

funds could be used to lower the interest rates of the TWDB's own lending programs to as little as 1.5%. An example of Option 4 would be TWDB purchasing up to 80% of a water supply facility, with no principal repayment due from the borrower for as long as 20 years.

Because SWIFT subsidizes revolving funds (repayments from existing borrowers are used to make new loans), SWIFT could enable more than $2 billion worth of projects over time as loans are repaid with interest. Combined with SWIRFT, however, SWIFT can, in theory, be leveraged to provide substantially greater amounts of financing.

SWIRFT is one of the funds that may receive disbursements from SWIFT. Like SWIFT, SWIRFT can only be used to finance water projects in the State Water Plan, through same set of existing TWDB loan programs to which SWIFT is targeted (those in the table above). Unlike the other funds eligible for SWIFT subsidies, SWIRFT is capitalized through new revenue bonding authority granted under H.B. 4, meaning it is totally free of any constraints related to the state debt limit. Also, unlike the other four programs eligible for SWIFT subsidies, SWIRFT revenue bonds can be used for an expanded set of financial assistance tools, including direct loans to local water project sponsors, purchasing of debt obligations from these local sponsors, or credit enhancement for TWDB's own funding programs.

SWIRFT thereby opens a new chapter in the board's financing programs. The credit enhancement component of SWIRFT is especially important to understand because of its potential for amplifying TWDB's lending capacity. Under H.B. 4, TWDB may pledge SWIRFT as collateral for the debts it incurs through the funding programs eligible for SWIFT support. In this way, SWIRFT could increase substantially the amount of debt TWDB could sell, as bond buyers would be promised revenues from borrower repayments and have as added security access to SWIRFT funds in the event that borrower repayments fell short of TWDB's own obligations.

This credit enhancement authority under SWIRFT, combined with its revenue-backed bond authorization collectively create the potential for TWDB to multiply the $2 billion authorized by voters to provide up to $26 billion in total financial support. That is an important figure only in as much as it is the full amount of state financial support requested by Regional Planning Groups in the 2012 State Water Plan. (Whether the political subdivisions and water authorities who participate in the Regional Planning Groups will ever ask the Board to make the full $26 billion available to them is another matter entirely, and will be discussed more fully in the second blog in this series.)

However, there are a number of factors that will determine how much the $2 billion appropriation to TWDB will actually grow over time. That will in turn determine how well the new funds can be used to support the wide range of needs in the State Water Plan, from conservation and reuse, to smaller scale projects in rural areas, to larger, longer-term projects proposed for growing urban areas.

As one option, TWDB could simply move the $2 billion through SWIFT, bypassing SWIRFT, and directly support its existing funding programs. While the money would be repaid to

SWIFT over time, it would not necessarily take advantage of leverage to grow the $2 billion. It would then be simply be a $2 billion revolving loan fund, recapitalized as borrowers repaid their debts to the board, with (subsidized) interest. In addition, if SWIFT is managed to provide financing subsidies (cash outflows) that outpace the value gained in the fund through market investments (cash inflows), the $2 billion could be substantially drained.

Another option would be for TWDB to put the lion's share of the $2 billion into the State Participation Program fund. This fund is generally used for longer-term, big-ticket projects, such as reservoirs and pipelines, a number of which are proposed in the 2012 State Water Plan. The State Participation Program allows TWDB to purchase a temporary ownership stake in a water project, with the idea that the loan would be paid back after the project was built and operating near capacity. Nearly 30% of funds the state has *already* made available to projects in the State Water Plan have been through programs with deferred repayment, including some $93 million through the State Participation Program in which repayment of the principal typically is deferred for 20 years, and $189 million through the Water Infrastructure Fund Deferred program, which defers principal and interest for up to 10 years.

This approach, however, would tie up most of the money in deferred loans, as illustrated by a January 10, 2013 memo to the Members of the State House of Representatives from H.B. 4's sponsor, House Natural Resources Chairman Allan Ritter: loans with 20-year deferred repayment periods would prevent SWIFT from fully revolving for more than 30 years.

If most of the SWIFT seed funds were sent directly to the state participation programs with deferred payments, then these few borrowers would receive the greatest benefit, and the opportunity to use the Prop 6 funds to shore up water security throughout the state could be compromised. In essence, a "big dog eats first" approach to using the new funds would mean that smaller projects for meeting real short-term water needs in smaller communities, including throughout rural Texas, could be undermined. On the other hand, a more balanced approach, more equitably distributed among different financing options, would allow greater leverage for the $ 2 billion and cover more water needs throughout the state.

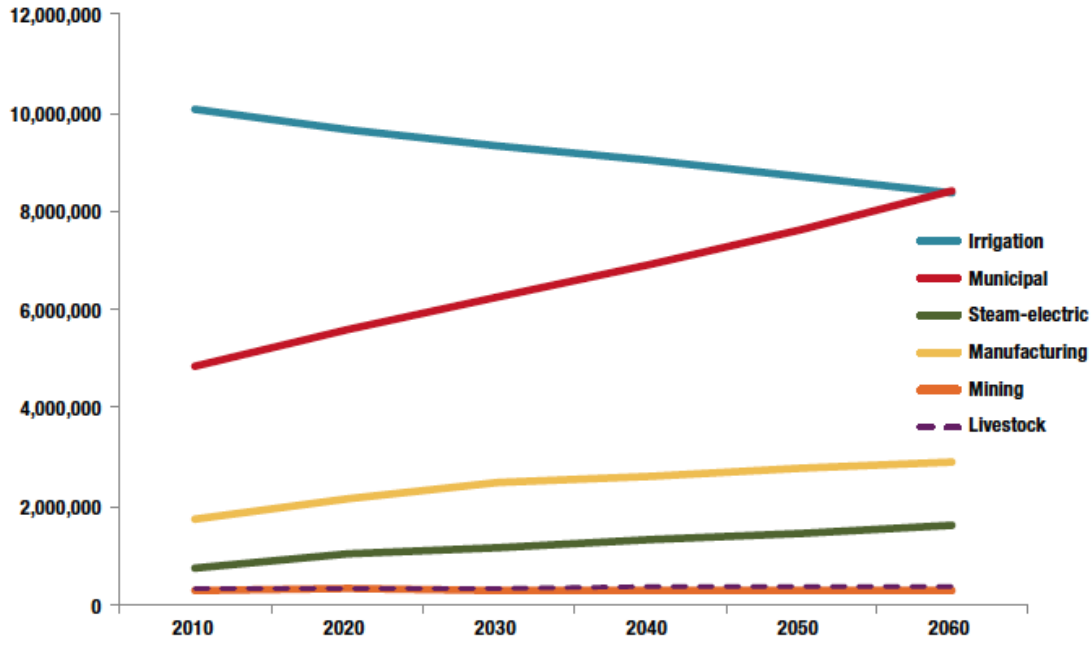
The TWDB now has the task of balancing these competing interests, all of which will take place in the context of the project prioritization process set up by HB 4. We'll look at that topic in our next blog.

Installment 2: Relationship Between Prop 6 and State Water Plan

Proposition 6 arose from debate about the need to "fund implementation" of the State Water Plan. But, the current state plan may not be the best roadmap for expenditure of the new funds. A few charts from the 2012 State Water Plan illustrate the concerns. .

We'll start with the plan's projection of future water demand.

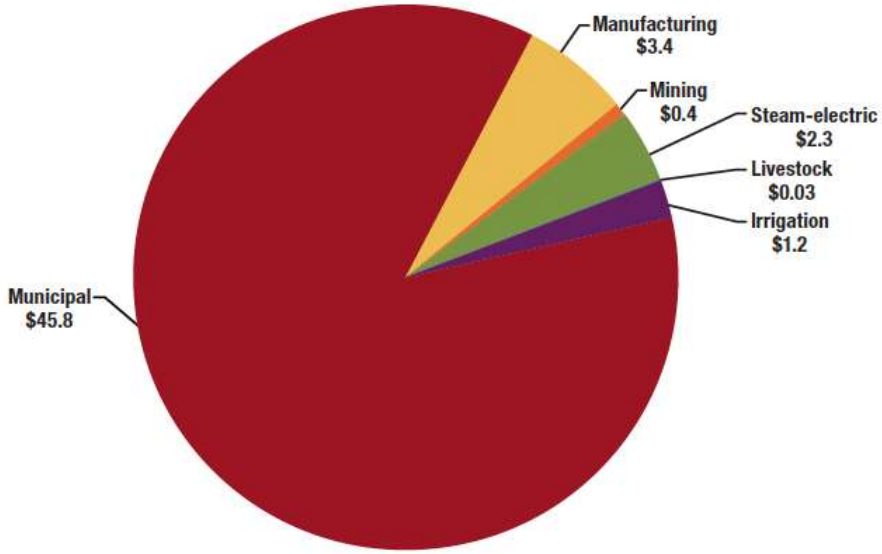
FIGURE 3.6. WATER DEMAND PROJECTIONS BY USE CATEGORY (ACRE-FEET PER YEAR).*



*Water demand projections for the livestock and mining water use categories are similar enough to be indistinguishable at this scale.

The biggest increase in of projected water demand growth by far is for municipal households and businesses. This municipal demand projection drives the total projected 2060 capital cost of the water plan, accounting for $ 45.8 billion of the $53 billion total.

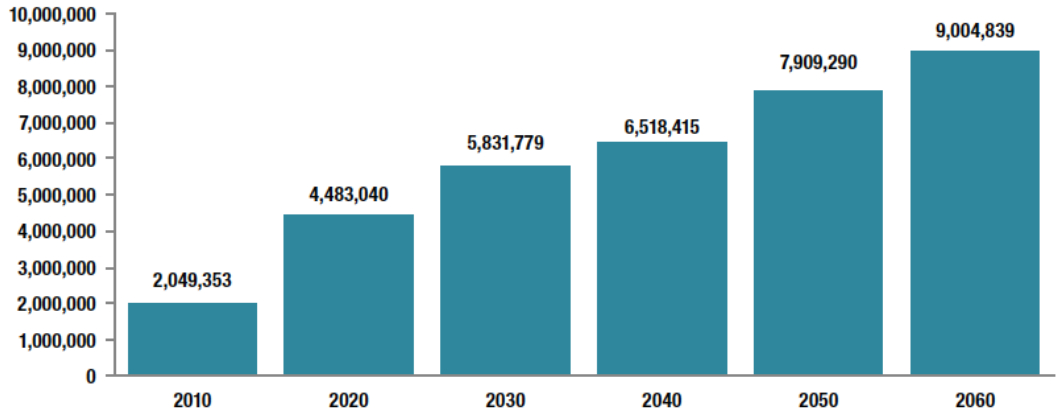
FIGURE 9.1. TOTAL CAPITAL COSTS OF RECOMMENDED WATER MANAGEMENT STRATEGIES BY WATER USE CATEGORY (BILLIONS OF DOLLARS).



The 2012 plan projections are based on the assumption that municipal demand will rise in direct proportion to population growth. These projections do not consider changes in land use or changes in consumer behavior that have resulted in state household water use falling 8 % over the past decade. As discussed in a separate analysis, the linear increase assumption is likely resulting in a substantial over-projection of future municipal demand.

In any case, to meet this projected demand, the Regional Groups say they plan to steadily add new supply over the coming fifty years. (This figure includes new water supply for all types of uses, not just municipal, but municipal use accounts for the majority of the new projected supply).

FIGURE ES.4. WATER SUPPLIES FROM WATER MANAGEMENT STRATEGIES IN THE STATE WATER PLAN (ACRE-FEET PER YEAR).



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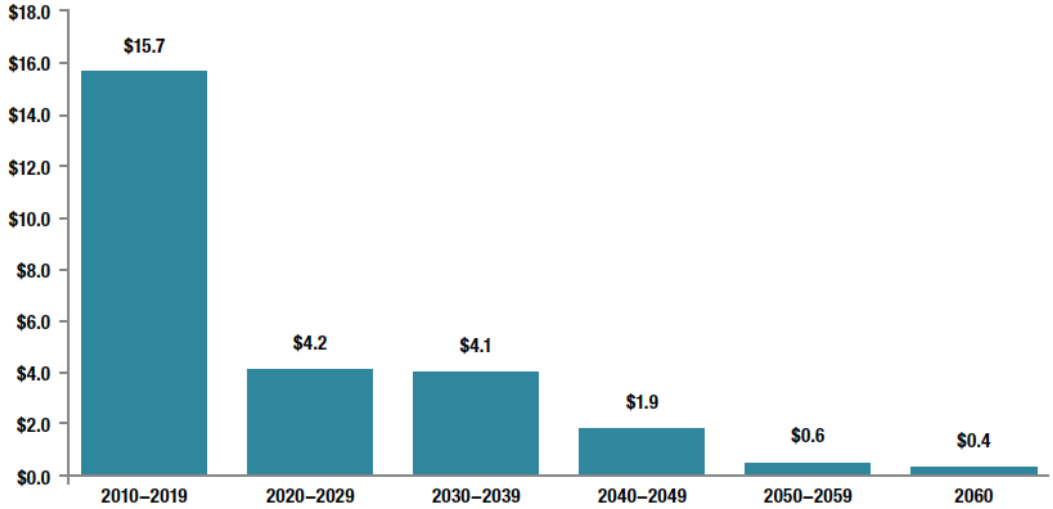
But, here is how the regional water planning groups translate these water demand and supply projections into in state financing needs.

FIGURE 9.3. DEMAND FOR TWDB FINANCIAL ASSISTANCE PROGRAMS BY DECADE OF ANTICIPATED NEED (BILLIONS OF DOLLARS).



This graph looks dramatically different from the previous graphs. In fact, a full 58% of the total amount of state financial support sought by the regional groups is requested for the first decade to serve a potential future demand that would not emerge for decades according to their own projection—and may not emerge at all if the projections are over-stated.

Remember that SWIFT would be a lending program where the loans are repaid by borrowers—borrowers that receive revenues from their customers. This means that what we build will be paid for by ratepayers and the loans must be repaid whether or not what is built is actually needed. If actual demand is less than projected demand, then rates could have to be increased substantially to pay back the loans (not to mention the disincentive for conservation if demand falls short of projections).

This is where the link to HB 4 and prioritization of projects becomes extremely important. The prioritization process (which we have described previously here) was recognized by the legislature as essential to ensuring that state funds are efficiently managed for the greatest public benefit. It is also an implicit recognition that not all the projects in the 2012 state water plan will need state funding (or will even be needed at all).

Thus, the prioritization process must ensure that state financial assistance from Prop 6 is both cost-effective and takes into account the possibility that future municipal demands may be substantially less than projected. A slow but steady approach to investment in water supply strategies that will meet a clearly demonstrated need in the near-term would be the most fiscally responsible approach to management of the new Prop 6 funds. And

the prioritization process, carefully implemented, is the tool the Texas Water Development Board needs to structure that fiscally-responsible approach.

One essential component of this slow but steady funding approach is investment in helping Texans to reduce their water demand (and save money) by implementing cost-effective efficiency measures. These measures, given time to take hold, can postpone or even avoid the need for massive, expensive new supply projects.

House Bill 4 requires the Texas Development Board to allocate some of the Prop 6 funds toward water conservation. Specifically, H.B. 4 directs the Board to make "premium financing" options available for conservation and water reuse, with at least 20% of the SWIFT funds meant to flow toward these purposes. Yet, many of the conservation strategies in the 2012 plan do not have an associated capital cost, making them unlikely candidates for recipients of the Board's lending program. Whether Prop 6 funds managed by the Board can effectively be used to achieve this allocation toward water conservation is the subject of our next post.

Installment 3: Financing Water Conservation and Efficiency

As the debate over Prop 6 played out, many advocates highlighted the fact that the underlying legislation, HB 4, provides that a certain percentage of funding should be dedicated to water conservation and reuse. The specific terms are important. HB 4 creates section 15. 434(b) of the Texas Water Code, as follows (emphasis added):

> *(b) Of the money disbursed from the fund during the five-year period between the adoption of a state water plan and the adoption of a new plan, the board shall undertake to apply not less than:*
>
> *(1) 10 percent to support projects described by Section 15.435 that are for:*
> *(A) rural political subdivisions as defined by Section 15.992; or*
> *(B) agricultural water conservation; and*
>
> *(2) 20 percent to support projects described by Section 15.435, including agricultural irrigation projects that are designed for water conservation or reuse.*

Even with this "undertake to apply" goal (which is a minimum, not a maximum, of what can be spent on conservation), there are serious questions about how TWDB can provide financial support for some types of non-agricultural conservation strategies, especially those involving improving assets held by private citizens or businesses outside of the agricultural sector. This is important because a significant portion of the state's conservation potential is in reducing the water footprint of homes, industry and businesses, something that often requires replacing inefficient appliances, irrigation systems and industrial equipment with water-efficient technologies. The central questions are (1) whether these improvements are amenable to the type of "debt-financing" available through the Prop 6 funding and (2) whether there are constitutional or other statutory prohibitions on using state funds for these strategies since they would create a "private benefit."

Because the TWDB already has a program for agricultural conservation loans, the use of Prop 6 funds through SWIFT for those activities should be more straightforward. The 2012 State Water Plan projects significant needs for agricultural water conservation. For example, Region M projects that $ 132 million would be needed to conserve about 140,000 acre-feet/year in agriculture by 2060. Region O projects a need to invest $ 346 million in agricultural efficiency measures to save 480,000 acre-feet per year, helping to reduce pressure on the dwindling Ogallala aquifer. Given these needs and the issues with financing customer-side efficiency improvements at the municipal level, it may be that most of the conservation funding through SWIFT goes to agricultural efficiency projects. (It is important to note that agricultural efficiency programs don't necessarily make more water available for other uses, as farmers often use the water saved to expand crop production. However, there are examples of arrangements in which water efficiency improvements on the farm have yielded water for municipal or environmental uses.)

Nevertheless, municipal conservation is a vital strategy for Texas to balance growth with limited water supply. The remainder of this post looks at what role, if any, Prop 6 might play to advance this strategy.

Debt-financing municipal conservation measures

The first question is *why* municipal water systems would choose to debt-finance water efficiency improvements for their customers?

Water conservation is actually a source of supply, just like a reservoir or a desalination plant. The redefinition of water conservation from a demand tool to a supply source was a major paradigm shift for water providers, but is now commonly understood. Investments in water conservation strategies with a clearly defined yield and lifetime can be debt-financed, and repaid through revenue raised from a water suppliers' customer payments, just as they would pay back costs for any other water supply investment.

It appears that the only source of municipal water conservation to which the Board has provided financial assistance in the past is the repair of leaky distribution systems—the aging pipes that move water from the source to the customer. The amount of water lost in transport from source to user can be significant. A 2010 survey by the Texas Water Development Board found that, on average nearly 15% of water treated and sent through municipal systems is lost before ever reaching a customer (based on 1,900 systems reporting data) Small systems serving 10,000 customers or less averaged about 20% total water loss, and large systems with 100,000 customers or more averaged 15%.

Because the replacement of a distribution system is an investment in the water system's own assets, it is a perfectly acceptable use of debt funds. Thus, reducing system water loss should be a desirable and authorized use of the SWIFT funds.

However, there are other municipal conservation programs aimed at individual water customers that can provide a reliable source of water supply. The most reliable of these "customer-side" approaches are those that replace physical systems, such as programs that provide rebates or other incentives for replacement of inefficient toilets or water boilers or for replacement of water-intensive landscaping with water-efficient landscaping.

These types of programs generally are more reliable in terms of supply than those that rely on changes in customer behavior (changes which may or may not be permanent and which are often influenced by perceptions of immediate drought).

Through a combination of appliance retrofits and lawn buy-back programs, Las Vegas has saved over 59.3 billion gallons of water since 1999. The city has spent $200 million to replace more than 150 million square feet of turf lawn over the past decade, with long-term water savings guaranteed by covenants ensuring that homeowners will not reinstall lawn they were paid to remove unless they repay their rebate. Recently, Austin Water announced it was launching its own lawn buy-back program.

Debt-backed capital investment programs allow water utilities to mobilize far more capital today than cash-backed capital programs. (For more explanation of the debt-financing envisioned by SWIFT, including a glossary of terms, see Installment 1 in this blog series). The benefit of debt-financing is that water systems can borrow the money for what is needed today, with future repayment backed by a pledge of future customer revenues. In comparison, cash spent today must be available today. Since water systems raise their cash from customer payments, a cash-financed program typically means higher rates today than a debt-backed program. As a result, debt-financed programs allow water systems to smooth the increase in customers' rates.

Debt cannot be used for behavior change programs—the debt issued for a capital program must be used to finance the construction, acquisition or improvement of capital assets. It cannot be used for operations and maintenance (for example, paying the energy bills for a water treatment plant) or for public outreach programs (for example, media campaigns to educate water users about conservation). These aren't rules set in Texas, they are rules set by the Governmental Accounting Standards Board, the entity that defines accounting standards for the municipal bond market in which the Texas Water Development Board participates.

But efficiency programs with a defined water yield are an investment in a capital asset—water supply—and should thus qualify for debt financing. And, in fact, there are water systems that use bond proceeds to finance customer efficiency programs. Seattle Public Utilities has used debt funds to finance the retrofitting of toilets and other water-using devices with low-flow replacements. In Seattle what made this possible was defining the "asset" being financed not as toilets, but as the long-term water savings gained by toilet retrofits.

The potential for water efficiency investments on customers' property does not end with toilets or turf grass. Institutional irrigation systems, industrial machinery, any physical water distribution or water-using device with a long lifetime can be a source of long-term water savings, and therefore supply. And Texas is uniquely positioned to unlock the water savings in its industrial, commercial and institutional sectors with the passage last session of the Property Assessed Clean Energy Act. This new law permits municipalities to use bonds to finance customer loan programs for energy and water conservation purposes, including water conservation systems, high efficiency irrigation equipment, on-site improvements to use municipal reclaimed water, and more. This type of bond (called a PACE bond) is repaid through tax assessments that remain attached to the property no matter who the future owner may be. The PACE bond concept holds significant potential for funding a transformation in the water intensity of Texas' economy..

So, if it is desirable to pursue a large-scale customer efficiency program (and if such approaches are included in the state water plan), and if debt financing would make it easier to do that, SWIFT funds would be made available for that purpose, right? Not necessarily.

Public Purpose v. Private Benefit

The ability to use SWIFT funds for these customer-side efficiency improvements largely comes down to whether programs that improve an asset owned by a private citizen or a business can be financed with public monies.

Texas, like most states, has a Constitutional prohibition against the use of public funds for private benefit, something called "the gift clause." As discussed in this post by the Energy Center at the University of Texas School of Law, Article III, Sec. 52(a) of the Texas Constitution prohibits the state from lending credit or granting money to "any individual, association or corporation whatsoever," a prohibition that can be relaxed for activities that would enable a public purpose.

Defining a public purpose is where the complications begin, however. In many instances, legislators have opted to explicitly authorize the use of state financing for specific activities rather than leave to the courts what might be reasonably construed to serve a public purpose. Such is the case with toll roads, for which purpose the state's credit has been authorized in numerous amendments.

In fact, one piece of legislation from the 2013 session attempted to do just that for water conservation. House Joint Resolution 142, filed by Chairman Alan Ritter (the House sponsor of H.B. 4), would have expressly defined water conservation as a public purpose eligible for state funding. As filed, HJR 142 provided that "[n]otwithstanding any other provision of this constitution, the legislature may provide for the creation of programs and the making of loans and grants of public money, other than money otherwise dedicated by this constitution to use for a different purpose, for the public purpose of water conservation."

Unfortunately, H.J.R. 142 did not advance through the legislature, leaving the question of whether the Board or other state agencies can lend their credit for the public purpose of municipal water conservation open to the determination of the Texas Water Development Board and for potential challenge in the courts.

Texas does have some history of using state credit for private benefit that serves a public purpose. One example is the use of TWDB funds to address the lack of safe drinking water and sewage treatment in colonias along the Mexican border. (The following is adapted from email correspondence with former bond counsel to the TWDB.) In the 1990s, the Board deliberated whether the gift clause prohibited it from making financing available for connections of homes water and wastewater utilities. Ultimately, the Board decided that as long as four tests were met, use of public funds would not constitute an unlawful gift or lending of credit. The four tests were:

1. Does the expenditure serve a public purpose?
2. Are there sufficient controls on the expenditure to ensure that the public purpose will be carried out?
3. Is the public protected in the use of public funds to accomplish the intended result?

4. Has the political subdivision making the expenditure adequately considered this use of funds?

If TWDB defines water conservation as a public purpose in its prioritization and rulemaking processes, and if it ensures sufficient controls over the use of funds to achieve that purpose (such as audits of water savings, installation of water-saving devices and deed restrictions or other assurances for their longevity), the TWDB would likely have sufficient grounds to include customer-side municipal water conservation programs as eligible for SWIFT funds. Using SWIFT funding for customer-side municipal water efficiency programs could help ramp up this cost-effective water supply strategy in communities across the state.

Effective use of the Prop 6 conservation earmark to include these programs will require a change in practice and perspective and clear rules from the TWDB, (and it will require that such programs be explicitly included as strategies or projects in the state water plan).