

Legislative Priorities Report

TWDB Priorities
for the 88th
Texas Legislative Session

Legislative Priorities

88th Texas Legislative Session

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Executive Summary

The mission of the Texas Water Development Board (TWDB) is to lead the state's efforts in ensuring a secure water future for Texas and its citizens. The TWDB is the state agency responsible for water supply and flood planning, financing, and research. It is our agency's mission to help ensure Texans plan and prepare for the perpetual threat of water scarcity and water surplus in our vast state.

To accomplish this, the TWDB collects, analyzes, and distributes water and geographic data that help businesses, citizens, local governments, and water providers make informed decisions on their water resources. Since its creation in 1957, the TWDB has been charged with addressing the state's water needs through planning and financial assistance. Local communities carry out the responsibility for providing water to their residents; however, the TWDB has a leadership and support role through guiding, enabling, and supporting the conservation and responsible development of the state's water resources. The agency coordinates regional water planning and prepares the state water plan to show Texans what actions are needed to achieve water security in times of drought. The TWDB also administers cost-effective financial assistance programs for water supply; wastewater treatment, distribution and collection; flood mitigation; and agricultural water conservation projects. Newly added to the agency's responsibilities as a result of the 86th Legislative Session is the development and rollout of the state's first regional flood planning process.

Section 6.156 of the Texas Water Code requires that the TWDB provide the governor and members of the legislature with a biennial report that includes a statement of

agency activities and recommendations for necessary and desirable legislation. This report includes the following six legislative recommendations, in priority order, that further our agency's mission and operational goals outlined in the TWDB's Strategic Plan for Fiscal Years 2023–2027:

1. Flood Statutory Updates
2. TexMesonet Statutory Authority
3. Texas Natural Resources Information System Modernization
4. Texas Open Meetings Act Virtual Allowance
5. MOU Statutory Update
6. Water Planning Notice Statutory Revision

In conjunction with the TWDB's legislative priorities, this report also includes narrative summaries of the TWDB's Exceptional Item Requests included in the agency's Legislative Appropriations Request for Fiscal Years 2024–2025. These requests include, in priority order, the following:

1. Project Management and Risk Mitigation (\$15,973,032)
2. Water Planning Grant Funding (\$5,230,000)
3. Rural Community Assistance (\$169,869,702)
4. Data Enhancement and Modernization (\$8,449,554)
5. Flood Program Resources (\$394,454,848)
6. Debt Service and Match (\$130,300,920)
7. Shared Technology Services (\$3,904,206)

Agency Activities

The following sections highlight recent accomplishments and initiatives as well as challenges and opportunities that the TWDB may face in the next five years, as outlined in the TWDB's Strategic Plan, 2023–2027. More details on these and other issues related to the TWDB can be found in the agency's Sunset Self-Evaluation Report, prepared at the beginning of the review cycle and submitted to the Texas Sunset Advisory Commission on September 1, 2021.

Recent Accomplishments and Looking Forward

The TWDB has experienced a significant increase in statutory and operational responsibilities in recent years due to the success of the State Water Implementation Fund for Texas (SWIFT) program, increases in funding through the state revolving fund programs, and the addition of new flood science, planning, and financing programs. Since 2013 (considered a reference year due to legislation that created the SWIFT program), the agency has seen a significant increase in key performance metrics. Total assets managed over that timeframe have more than doubled from \$6.9 billion to \$18.1 billion; the agency has experienced a 2.5-fold increase in the number of construction contracts managed (an increase from 257 to 657); and the average number of new financial assistance agreements closed or executed annually has increased from 98 to 198. From 2016 to 2021, the TWDB has delivered an average of over \$2 billion per year in financial assistance, a many-fold increase in the average annual amount compared with years past. Of the \$33.5 billion in financial assistance commitments since the agency's inception in 1957, more than \$17 billion has been committed since 2013.

With this growth has come both challenges and opportunities. For the past two years, the TWDB has been actively addressing workload and customer service challenges that have largely been brought on by the significant increases in demand for our financial assistance programs. These challenges have been exacerbated by difficulties in hiring and retaining skilled staff in current economic conditions.

The Sunset Staff Report with Commission Decisions, released in July 2022, addressed these challenges along with other issues. The Sunset Commission adopted a series of

recommendations tied to three key issues identified in the staff report:

- Issue 1: TWDB's Inefficient Review Process Contributes to Project Delays and Increased Costs
- Issue 2: A More Strategic, Comprehensive Evaluation of Programs and Outreach Efforts Would Benefit TWDB and Entities Eligible for Financial Assistance
- 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

In addition, the Sunset Commission adopted four new recommendations:

1. Drought Baseline for Planning
2. State Water Plan Project Feasibility Review
3. Performance Measures Update
4. State Climatologist Consultation

In general, the TWDB agrees with the recommendations in the Sunset Staff Report with Commission Decisions regarding the TWDB; however, we do believe that some items may require more resources for implementation than what the report has indicated. TWDB staff are currently working to address those recommendations that do not require additional resources, and the TWDB has requested additional resources in the Legislative Appropriations Request to address some items. The agency looks forward to finalizing the Sunset process during the 88th Legislative Session.

The following sections highlight recent accomplishments and initiatives as well as challenges and opportunities that the agency may face in the next five years, including implementation of recommendations from the Sunset review process. More details on these and other issues related to the TWDB can be found in our Sunset Self-Evaluation Report, which was prepared at the beginning of the review cycle and submitted to the Sunset Commission on September 1, 2021.

Flood Initiatives

The 86th Legislature and Governor Abbott greatly expanded the TWDB's role in flood planning, science, and

financial assistance via the historic passage of Senate Bill (SB) 7 (which created the Flood Infrastructure Fund and the Texas Infrastructure Resiliency Fund) and SB 8 (which created a new regional and state flood planning process). SB 500 appropriated funding for infrastructure projects related to drainage, flood mitigation, flood control, regional flood planning activities, and flood science initiatives to support development of the regional and state flood plans.

In recognition of the need for greater state resources to assist with implementing flood mitigation strategies, the legislature made a one-time transfer of \$793 million from the state's Economic Stabilization or "Rainy Day" Fund via Senate Bill 500 to create a new flood financial assistance program to be administered by the TWDB. The Flood Infrastructure Fund (FIF) program, directed by SB 7, is designed to make implementing drainage and flood projects more affordable for Texas communities and to meet immediate needs for funding with grants and low-interest loans.

To date, the TWDB, in partnership with numerous stakeholders, has made considerable progress in the implementation of these new flood programs. Of the 208 Hydrologic Unit Code 8 watersheds in Texas, 35 have completed base level engineering studies and 66 are in progress; we anticipate full statewide coverage by 2024. Regional flood planning is in full swing, with the 15 regional flood planning groups on track to submit the first regional flood plans by January 2023; the first state flood plan will be adopted by September 1, 2024. And as of November 2022, the TWDB has committed more than \$461 million for 134 FIF projects, including early warning systems, watershed studies, match for federal programs, and a range of flood control and mitigation strategies.

State Water Plan Implementation

The agency looks forward to continuing to support the implementation of the state water plan. The 2022 State Water Plan, adopted in July 2021, projects Texas' population will increase 73 percent by 2070. The plan recommends more than 5,800 strategies crafted to conserve existing water supplies and create additional supplies to ensure that the needs of our growing population are addressed. The estimated capital costs associated with implementing the 2022 State Water Plan are \$80 billion,

with water providers estimating they will need about \$47 billion of that amount in state financial assistance. Of the \$80 billion, approximately \$77.1 billion will support strategies associated with municipal water suppliers or wholesale water providers.

The TWDB has SWIFT and other financial assistance programs available to help finance these water management strategies. The TWDB has committed almost \$10 billion for dozens of state water plan projects in Texas through the SWIFT program, resulting in potential savings of over \$1.3 billion for Texas water providers since the first funding cycle in 2015. Projects funded through SWIFT—transmission pipelines, major reservoirs, aquifer storage and recovery, canal linings, capacity expansions, groundwater wells, leak detection systems, water meter replacements, and wastewater reuse—will all help ensure that Texans have sustainable and reliable water sources for decades to come. Projects range greatly in both size and scope and serve a number of geographic areas around the state.

Financial Assistance Needs for Small, Rural, and Economically Disadvantaged Communities

Over the last three decades, the TWDB has made significant strides in assisting small, rural, and disadvantaged communities through the state revolving fund (SRF) programs and the Economically Distressed Areas Program (EDAP) so they are able to install first-time systems, replace aging infrastructure, and upgrade water and wastewater treatment plants to meet regulatory standards. In EDAP's 30-year history, the TWDB has committed \$511 million to hundreds of planning, acquisition, design, and construction projects in economically distressed areas. Since 2013, 58 percent (totaling approximately \$1.37 billion) of TWDB commitments across all programs have been for projects in rural communities with a population of 10,000 or less. And despite a limited number of rural entities that have applied directly for funding through the SWIFT program, many have benefited from SWIFT projects with regional sponsors that provide water supply to many large and small communities over extended geographic areas. For instance, Bois d'Arc Lake, which is being developed by North Texas Municipal Water District, will meet the water needs of 1.8 million people, including two dozen rural communities.

Despite the available financial assistance options, the needs of some Texas communities are not fully met because the capacities of the EDAP and SRF programs are limited, and some communities lack the resources to repay financial assistance in the form of a loan due to aging populations on fixed incomes, limited commercial tax base, and/or limited opportunities for economic development and growth. The SWIFT program and the Texas Water Development Fund are not able to provide grants because of statutory prohibitions, and loans through these programs as well as the Rural Water Assistance Fund program are often not adequately subsidized to meet the needs of small, rural, and disadvantaged communities.

General revenue appropriated by the 87th Legislature will support the issuance of general obligation bonds that will provide financial assistance for up to \$100 million in EDAP projects over the biennium, and the state fiscal year 2022 SRF programs will be able to provide approximately \$55 million in disadvantaged capacity in total. The TWDB is optimistic that additional federal funding from the Infrastructure Investment and Jobs Act of 2021 will be able to meet at least a portion of these needs in the near future.

Infrastructure Investment and Jobs Act of 2021

Federal H.R. 3684, the Infrastructure Investment and Jobs Act of 2021, also referred to as the Bipartisan Infrastructure Law, provides nationwide SRF funding of \$43.4 billion over five years to expand SRF funding for all eligible projects, remediate emerging contaminants, and replace lead service lines. On October 5, 2022, the Board approved the Clean and Drinking Water SRF 2023 Intended Use Plans, which detail how the agency intends to utilize federal funding for general activities in the first year's allotment. The TWDB began to invite projects to apply for funding in late 2022.

Staffing Challenges

The agency continues to face challenges in maintaining staffing levels, particularly in the areas of information technology, contract administration, engineering, and flood planning, but also professionals with specific expertise in Texas' water resources, such as flood engineers and modelers, flood grant coordinators, GIS specialists, hydrogeologists, groundwater modelers, surface water engi-

neers, and surface water hydrologists. Because of striking disparities between what we are able to pay in comparison with the private sector, the TWDB is often faced with hiring staff at entry- to mid-level positions and providing these individuals with extensive training and development. Based on the highly specialized work performed and the increased workload on existing staff, this situation is not optimal nor sustainable.

In response to these challenges, we have increased some starting salaries and currently offer both recruitment and retention bonuses for difficult-to-fill positions. As the agency continues to take on new responsibilities, we are also evaluating and implementing some reassignment of job duties to separate administrative and technical functions and evaluating the transition of some positions away from general functions toward a greater focus on specialized tasks. The TWDB endorses telecommuting as part of a hybrid work model, in addition to other flexible work alternatives such as compressed and staggered work schedules, as a powerful tool to promote a positive work culture and assist the agency in both recruiting and maintaining a productive and high-quality workforce. Additionally, in response to the growing proportion of new and less experienced staff, the Executive Administrator has begun a succession planning initiative to help prepare current employees to assume leadership positions in the future.

Cybersecurity

The TWDB is highly aware that state government faces a continuous stream of unknown threats that target IT infrastructure, users, and agency data, and this activity has seen a significant increase in 2022. To mitigate cybersecurity risks, the agency's Information Security Officer

- submits a biennial security plan to the Department of Information Resources;
- engages a third-party risk assessment of agency information resources;
- ensures agency IT security policies are reviewed and acknowledged by agency employees on an annual basis;
- performs external and internal vulnerability assessments against the TWDB IT infrastructure, applications, and systems;

- conducts regular phishing exercises to train employees on how to detect and report phishing emails;
- performs regular disaster recovery exercises to ensure integrity of data and systems;
- maintains a multilayered approach to protecting the IT infrastructure, including firewalls, intrusion detection and prevention systems, and effective spam and malware filtering; and
- ensures agency Security Awareness training is certified by the Department of Information Resources and that all agency information resource users complete the training on an annual basis.

In particular, the Information Security Officer's regular phishing exercises have been highly effective because they are crafted to "hook" individual employees with personal relevance. The exercises have been very successful in making our employees far more vigilant to outside threats.

Customer Service Challenges

The previously mentioned increase in workload and hiring challenges has resulted in an increase in customer feedback regarding the timeliness of financial assistance project reviews. The TWDB continues to monitor customer feedback and is working to improve customer service while balancing staff workload and the need to comply with state and federal statutes and regulations as well as general program limitations.

Over the last two years, the TWDB has taken several steps to meet expectations for financial assistance project engineering-related reviews, including contracting with the University of Texas at Arlington to assist with plans and specification review, inspections, project prioritization scoring, and developing external program guidance. The TWDB has increased starting salaries of engineers and is currently offering a recruitment bonus for licensed professional engineers.

Additional efforts included hiring a consulting engineering firm to review TWDB engineering processes to identify potential efficiencies and recommendations for improvement and to assist the TWDB with evaluating potential management tools to track project status.

Ultimately, we envision a project management tool that enables engineering staff and managers to prioritize workload, track document submittals, and manage project correspondence. Automation can be utilized to maintain an updated project schedule and meet estimated review timelines. Additionally, an external facing portal would provide customers a location to access information about review status and program processes and communicate with the TWDB project manager. These enhancements will help the TWDB identify potential delays in a timely manner. We are currently working with a contractor to develop this tool.

We have also created a Customer Service Liaison position to serve as intermediary between the TWDB and financial assistance customers, monitor projects, and assist customers in addressing and resolving issues. In response to Issue 1 in the Sunset staff report, we have begun a process to develop, collect, and analyze performance metrics that will aid in establishing goals for evaluating our project review process. The TWDB is also developing a plan to prioritize improving our project review process to eliminate inefficiencies and inconsistencies. The plan will include a number of efforts already in place and currently in progress, including the recent restructuring of our regional project development area, the creation of new key positions, and our work to implement a robust project management tracking system.

The TWDB is also seeking authorization to implement a risk-based approach to project review, a related issue that was included as a recommendation in the Sunset report. The Texas Commission on Environmental Quality (TCEQ) has flexibility regarding review of engineering plans and specifications for wastewater projects, and this flexibility has proven successful for managing increased workloads and expediting important infrastructure projects in Texas. The TWDB is seeking similar flexibility for conducting engineering reviews; this will improve efficiencies in the review processes, increase customer satisfaction, and expedite the construction of infrastructure projects in the state. To implement this flexibility, the TWDB is seeking statutory changes:

- Self-Certifications and Municipality Reviews: Texas Water Code § 26.034 and TCEQ rule § 217.6 submittal requirements and review process describe a process that includes acceptance of a summary transmittal letter to the Executive Director of TCEQ,

but the TWDB’s authorizing legislation does not provide the same authorization. Similarly, Texas Water Code § 26.034(d) and TCEQ rules § 217.8 allow the Executive Director to accept municipal reviews, but no statutes provide the same authority to the TWDB. We are requesting a statutory change to Texas Water Code § 17.276(d) to give the Board authority to accept the summary transmittal letter for its projects or a municipal review, thus providing the same flexibility and discretion as TCEQ.

- Changes to Texas Water Code § 17.278 and § 15.104: the TWDB is seeking updates that would allow release of construction funds at a certain level of design completion to increase efficiencies in financial assistance projects.

We believe these efforts will enhance the review process, help make our processes more efficient, and provide greater consistency for our customers. We are also reevaluating our review process for projects involving alternative delivery methods; this will include clarifying an accompanying guidance document and a related rulemaking proposal in late 2022.

The TWDB requires financial resources to continue to address customer service challenges, and our Legislative Appropriations Request includes an exceptional item request that will support continued implementation of a project management tracking system and provide additional staff resources.

Outcomes of the 87th Legislative Session

Along with general government legislation, the agency has worked to implement the following TWDB-related legislation from the 87th Legislative Session:

- HB 692, relating to retainage requirements for certain public works construction projects
- HB 1904, relating to the use of the Water Infrastructure Fund
- HB 1905, relieving certain regional water planning groups of certain duties

- SB 601, relating to the creation and activities of the Texas Produced Water Consortium
- SB 669, relating to certain reports by the Texas Water Development Board
- SB 1890, relating to the applicability of uniform grant and contract management standards to certain Texas Water Development Board programs

Recommendations to the 88th Texas Legislature

1. Flood Statutory Updates

The legislature should clarify certain statutes that will take effect upon and after adoption of the first state flood plan related to the Flood Infrastructure Fund (FIF) and accounts within the Texas Infrastructure Resiliency Fund (TIRF).

Background

The 86th Texas Legislature significantly expanded the TWDB’s responsibilities with respect to flood mitigation, including activities in planning, science, and financial assistance.

Senate Bill 8 created the first statewide, comprehensive flood planning process in Texas and directed the TWDB to adopt rules, designate initial regional flood planning groups, support updated mapping and data collection, and provide technical assistance to the regional flood planning groups. The TWDB will publish the first state flood plan by September 1, 2024, and every five years thereafter.

Senate Bill 7 created two funds, the FIF and the TIRF, to provide financial assistance to political subdivisions of the state for flood projects. House Joint Resolution 4 proposed a constitutional amendment to create and protect the FIF that was approved by Texas voters in November 2019. The legislature designed the FIF to make drainage and flood projects more affordable for Texas communities and to meet immediate needs for funding with grants and low-interest loans through \$793 million appropriated to the FIF from the Economic Stabilization Fund. Currently, allowable uses of the FIF are listed in Texas Water Code § 15.534; upon adoption of the first

state flood plan, the FIF may only be used to fund projects in the state flood plan.

Senate Bill 7 also created the TIRF, and the legislature appropriated a total of \$685 million to the TWDB for use in two of the four accounts within the TIRF. The Floodplain Management Account received \$47 million to be used to implement the state flood planning process established by Senate Bill 8, and the Hurricane Harvey Account received \$638 million to provide funds to the Texas Division of Emergency Management for match in the Hazard Mitigation Grant and Public Assistance Grant programs, both administered by FEMA. The remaining two accounts that did not receive funding include the Federal Matching Account (created to meet match requirements for federal projects and to make a loan for the local share of a federally authorized ship channel improvement project), and the Flood Plan Implementation Account (created to provide financing for projects in the state flood plan upon its adoption).

When the Board adopts the first state flood plan, three key changes will take place in statute. First, existing direction regarding the TWDB's allowable uses of the FIF will be deleted (Texas Water Code § 15.534). Second, new direction will take effect limiting the TWDB's use of the FIF to only provide financing for projects in the state flood plan (Texas Water Code § 15.5341). Third, the Flood Plan Implementation Account within the TIRF will take effect for use in providing funding for projects in the state flood plan (Texas Water Code § 16.4545). Later, on September 1, 2031, any remaining balance in the Hurricane Harvey account will be transferred to the Flood Plan Implementation Account (Texas Water Code § 16.454(j)).

Given that the uses of the FIF and the Flood Plan Implementation Account within the TIRF will become duplicative upon adoption of the state flood plan, identifying a single location for funds would provide clarity for the agency. Designating the FIF as the single source of funding would build upon an existing, well-established program and place critical dollars within a constitutionally dedicated fund. Without this clarification, funds may also become stranded upon the eventual transfer of remaining dollars from the TIRF Hurricane Harvey Account in 2031.

In addition, the TWDB recommends that the legislature preserve existing direction in Texas Water Code § 15.534 regarding uses of the fund with one suggested adjust-

ment. Texas Water Code § 15.534(a)(2) states that the FIF may be used "to make a grant or loan at or below market interest rates to an eligible political subdivision for a flood project to serve an area outside of a metropolitan statistical area in order to ensure that the flood project is implemented." Metropolitan statistical areas capture the county containing an urban center as well as surrounding counties, often including areas that are rural. Using an alternative to the term "metropolitan statistical area" could allow rural areas within urban-adjacent counties to be eligible for available FIF grant funding.

Statutory change: §§ 15.534, 15.5341, 16.4545, and 16.454(j) of the Texas Water Code

2. TexMesonet Statutory Authority

The legislature should codify the TWDB's responsibilities with respect to the TexMesonet, providing specific statutory authority to serve as the lead agency to develop the hydrometeorology network and further mesonet efforts in Texas.

Background

A mesonet is a set of earth observation stations designed to detect and monitor "mesoscale" weather phenomena ranging in size from several miles to hundreds of miles, including flooding, severe thunderstorms, high winds, droughts, and heatwaves. The TexMesonet hydrometeorological network, initiated after the devastating 2015 Blanco River flood, provides statewide data related to hydrological and meteorological conditions that is collected from accurate, on-the-ground, deliberately placed earth observation stations. Data is collected from national, regional, and specialized networks, such as those operated by the National Weather Service, U.S. Forest Service, Lower Colorado River Authority, Texas Soil Observation Network, and others. TexMesonet operates as a "network-of-networks" aggregating data into a central location. This data is shared freely online in English and Spanish at texmesonet.org, providing benefits for weather forecasting, flood preparedness, drought monitoring, wildfire management, water resources planning, water conservation, agriculture, industry, and the public. On-the-ground weather data provided by TWDB and partner stations support improved weather models and forecasts, which contribute to improved public safety, agricultural productivity, and scientific research. Since its inception,

TexMesonet has grown to include 91 TWDB stations and more than 3,000 partner stations. The TWDB continues to strategically add its own managed stations to improve statewide coverage.

Currently, TexMesonet is operated under the TWDB's umbrella authority for studies, investigations, and surveys but is not explicitly named in statute. Specific statutory authority for this program would establish the TWDB as the lead agency to coordinate this work in Texas through station ownership and partnerships with public and private entities. Specific authority would also formalize stakeholder involvement through the TexMesonet Advisory Committee, to include the Office of the State Climatologist and other appropriate entities, with the TWDB as the supporting entity. This effort is already underway at the TWDB to gather input to ensure that network growth, data collection, and product creation continue to serve end users across all sectors in Texas. Specific authority for TexMesonet was included as a major issue in the TWDB's Sunset Self Evaluation Report.

This recommendation has an associated exceptional item request that would facilitate complete buildout of the hydrometeorological network on an accelerated timeframe, develop and support a statewide reference evapotranspiration dataset, expand statewide soil conditions data, and enable the production of hydrometeorological products and tools.

Statutory change: § 16.012 and (new) § 16.026 of the Texas Water Code

3. Texas Natural Resources Information System Modernization

The legislature should update the name of the Texas Natural Resources Information System (TNRIS) to the "Texas Geographic Information Office (TxGIO)" to better reflect the core mission and concept of the office.

Background

The 60th Texas Legislature authorized the TWDB to create a centralized data bank for all hydrologic data collected in this state. Later, the legislature expanded this effort by establishing TNRIS as a centralized information system incorporating all Texas natural resource data, socioeco-

conomic data related to natural resources, or indexes related to that data that is collected by state agencies or other entities.

Today, natural resource information is only a fraction of the data created and hosted by TNRIS, and the program's name is no longer an accurate descriptor. TNRIS serves as a centralized clearinghouse for natural resource, census, emergency management, and other socioeconomic data; provides high quality historic and current geospatial data products; offers education and training; and works to advance the GIS community in Texas through collaboration, expertise, and cost-sharing initiatives. In 2011, the 82nd Texas Legislature recognized the TNRIS Director as the Geographic Information Officer of Texas. Rebranding TNRIS as the "Texas Geographic Information Office" would better align with the Director's official title and better encompass the variety of work carried out by the program.

Without this item, TNRIS may miss out on opportunities to attract more data collection partnerships, inquiries regarding the availability of geographic information, and recognition as the office for state agencies and the public to contact for assistance when working with geographic data. According to the National States Geographic Information Council, a state geographic information office reduces duplication, ensures access to geographic data, publishes standards/best practices, and improves efficiencies in delivery of government services. More than half of U.S. states have a geographic information office.

A similar request to rename the TNRIS program was included as a major issue in the TWDB's Sunset Self-Evaluation Report.

Statutory change: §§ 16.017 and 16.021 of the Texas Water Code

4. Texas Open Meetings Act Virtual Allowance

a) The legislature should make an allowance for members of the public to participate in TWDB open meetings by telephone or audio.

b) The legislature should make an allowance for the Water Conservation Advisory Council or any of its committees to hold an open or closed meeting by video conference call.

TWDB Open Meetings

During the COVID-19 pandemic, the TWDB conducted open meetings virtually in accordance with Governor Greg Abbott's executive orders to contain the spread of COVID-19 and corresponding allowance for virtual and telephonic open meetings. As noted in the TWDB's Sunset Self-Evaluation Report, members of the public became accustomed to remote participation by telephone or audio (without videoconferencing) while that suspension was in place. Following its expiration in September 2021, the public may only participate remotely in TWDB open meetings if capable of using *both* audio and video.

Without an allowance for participation by telephone or audio only, the members of the public most affected are those who do not have the necessary broadcast equipment or sufficient broadband service to participate remotely via videoconference. To participate in open meetings again, these individuals could potentially face long and costly travel to meetings held at the TWDB's headquarters in Austin. Expanding public access to open meetings by telephone or audio could lower barriers to participation for those with connectivity challenges.

Statutory change: § 6.060 of the Texas Water Code

Water Conservation Advisory Council Open or Closed Meetings

The 80th Texas Legislature created the Water Conservation Advisory Council (WCAC) in 2007 and directed the TWDB to appoint membership and provide staff support for the council's work. The Council serves as a professional forum for the continuing development of water conservation resources, expertise, and progress evaluation, and its 23 members represent a diverse group of entities and interest groups. Each biennium, the Council prepares a legislative report detailing progress made in water conservation in Texas as well as recommendations to advance water conservation in this state.

The Council may hold public meetings to accomplish its work, but existing requirements of the Texas Open Meetings Act as applied to the Council are unclear. During the COVID-19 pandemic, the Council conducted its work virtually in accordance with Governor Greg Abbott's executive orders and corresponding allowance for virtual and telephonic open meetings; since that allowance expired

in September 2021, the Council has adhered to in-person quorum requirements.

The volunteer members of the council spend considerable time and resources traveling to attend meetings in addition to their regular employment. Clarity regarding requirements for WCAC meetings under the Texas Open Meetings Act could lower barriers to participation for volunteers, prevent volunteer fatigue, and provide additional options for public participation and attendance. All meetings would still be subject to notice requirements and would still be required to offer a physical location where the chairperson is present and that is open to the public, with the addition of two-way communication capabilities. This allowance would simply require only the chairperson, rather than a quorum of these volunteers spread throughout the state, to participate at a physical location.

Statutory change: § 10.007 of the Texas Water Code

5. MOU Statutory Update

The legislature should remove the general statutory requirement for the TWDB to adopt Memoranda of Understanding (MOUs) with any other state agency in rule.

Background

Statutes that created the TWDB in 1957 and subsequently combined the TWDB with two other water agencies in 1977 to create the Texas Department of Water Resources did not contain requirements related to MOUs. In 1985, the 69th Texas Legislature passed Sunset legislation that split the Texas Department of Water Resources into two agencies, creating the Texas Water Commission (a predecessor of the TCEQ) and recreating the TWDB. Within this Sunset legislation, statute required that MOUs specifically between the Texas Water Commission and the TWDB or generally between each new agency and any other state agency be adopted by rule. Later, the 72nd Legislature deleted the specific requirement related to MOUs between the Texas Water Commission and TWDB, but the general statutory requirement for TWDB MOUs with any other state agency remains.

It is likely that the TWDB's statutory requirements related to MOUs arose from the need to coordinate closely with other state agencies, particularly its newly formed,

regulatory sister agency, following the reorganization in 1985. Other than the TCEQ, no other Article VI agencies have a similar, general statutory requirement to adopt all MOUs in rule. Removing this requirement would decrease administrative burdens on TWDB program and legal staff who prepare time-intensive rulemaking packages each time an MOU is adopted by the agency. Additionally, each time an MOU is updated by the TWDB and another agency, the updated language must be published in rule. The rulemaking process takes time, with a required 30-day public comment period. Therefore, updates to the MOU text in rule are not timely. The purpose of the rulemaking process established by the Administrative Procedure Act is to provide for public participation in the rulemaking process. In the situation of an MOU between the TWDB and another agency, the substance of the rule (the MOU text) would already be established in an executed contract before publication as a proposed rule. Therefore, the rulemaking process of publication, public comment, and response to public comment is not applicable to the situation of executed contracts such as MOUs.

Statutory change: § 6.104 of the Texas Water Code

6. Water Planning Notice Statutory Revision

The legislature should remove the statutory requirement for regional water planning groups to post public notice of certain meetings in newspapers.

Background

The 75th Texas Legislature established a water planning process coordinated by 16 regional water planning groups (RWPGs), a “bottom-up” approach that relies heavily on critical work conducted at the local level. Since the passage of Senate Bill 1 in 1997, the RWPGs have been required by law to post public notice of certain meetings in local newspapers, including pre-planning meetings, public hearings on draft regional water plans, and public hearings to resolve interregional conflicts. This requirement is often a burdensome and expensive task; the RWPGs expend thousands of dollars out of their regional water planning grant funds for newspaper postings, with costs up to \$5,000 for a single posting in a single region.

Today, this expensive newspaper notice requirement is antiquated. Since 1997, the TWDB has enhanced its online information available to the RWPGs, and the public has become more accustomed to finding and receiving information electronically. In 2021, the TWDB revised its regional water planning rules to remove all requirements for newspaper postings that were not directly tied to statutory requirements. When the 86th Texas Legislature established a similar regional planning process focused on flood, it did not require the new regional flood planning groups to post meeting notices in newspapers.

Removing the remaining newspaper posting requirements for RWPGs would better align the public participation processes for regional water planning and regional flood planning. This change would also provide significant cost savings for RWPGs and allow these critically needed funds to be applied to the development of regional water plans. RWPG meetings would still be subject to significant public notice requirements, including mailed public notice to entities identified in law, electronic posting on the RWPG website and the secretary of state’s website, as well as electronic notification for any person of interest to the RWPG. This change would not prohibit groups from continuing to post newspaper notices if desired at the local level.

Statutory change: § 16.053 of the Texas Water Code

Legislative Appropriations Request Exceptional Item and Rider Requests

Exceptional Item Requests

The TWDB is requesting seven exceptional items for the 2024–25 biennium for a total of \$728,182,252. Out of this amount, \$670,280,920 represents funding for projects. Additional detail on each of these requests is captured in the TWDB’s Legislative Appropriations Request.

1. Project Management and Risk Mitigation (\$15,973,032)

Description/Justification: This exceptional item package includes six unique requests that would support the TWDB's increasing workload and responsibilities, right-sizing the workload per staff member. First, the TWDB's current project database lacks the functionality to identify bottlenecks and inefficiencies, contributing to delayed project implementation and increased costs to customers. Funding for continued development and implementation of a multi-phased project management system with internal and external tracking capabilities will allow the TWDB to interface with customers on submittals and status of TWDB-financed projects.

Second, the TWDB engages in various contract studies and projects to advance the agency's mission, and technical staff in the Office of Water Science & Conservation currently manage 65 percent of agency contracts. This request includes additional staff resources dedicated to contract management that would better balance the workload between technical experts and contract managers, allowing technical experts to focus on core functions within their field of expertise.

Third, additional staff resources are needed to ensure proper management of projects and mitigate risk across the agency. More FTEs are required due to increased workload for administration of federal flood mitigation and outreach programs, flood planning, financial assistance program administration, and project review and oversight, including engineering support. The TWDB anticipates an additional \$3.4 billion in federal Infrastructure Investment and Jobs Act funding to be allocated through FEMA to the Flood Mitigation Assistance program over the next 5 to 10 years. To manage this 3.5-fold increase, additional funding for staff and contracted services are required to support the program in Texas. Without this funding, we will not be able to effectively handle additional workload, which could result in lesser quality flood mitigation applications and projects, delays in payments and processing, and reduced federal funding for flood mitigation. Without the support for regional flood planning, there will continue to be numerous communities in Texas, often smaller and rural, that do not yet have appropriate or sufficient flood risk information to identify, evaluate, and include a flood mitigation project in the regional and state flood plans.

Fourth, the TWDB's technology footprint and the amount of data collected, processed, and stored by the agency continues to grow at a rapid pace as the agency implements new initiatives and works to maintain existing programs. This request includes funding for tools and staffing resources to properly protect a rapidly growing information technology footprint from evolving cyber threats.

Fifth, targeted salary increases are needed to recruit and retain staff, address existing salary disparity issues within the agency, and address pay equity issues relative to other agencies. Sixth, the buildout and enhancement of additional office facilities is needed to accommodate a growing workforce that reflects the TWDB's increased responsibilities.

The total cost for this exceptional item would be \$15,973,032 for the FY 2024–25 biennium, including 51 new FTEs.

External/Internal Factors: As noted in the TWDB's Sunset Report, the number of projects and contracts managed, along with other key performance indicators spanning all areas of the agency, have greatly increased since 2013, while staffing and administrative resources have not increased proportionally. Without the six items in this package, the TWDB could, respectively: face continued delays with project review and implementation as well as increased project costs; continue to place a substantial burden of contract management responsibilities on technical subject matter experts; struggle to provide proper staff resources to accomplish increased workload demands, leading to overwork and burnout of existing staff; face increased risks of a cybersecurity breach, resulting in digital, economic, and reputational damage to stakeholders, the agency, and the state; struggle to recruit and retain existing staff; and be unable to properly accommodate its growing workforce in a suitable office space.

2. Water Planning Grant Funding (\$5,230,000)

Description/Justification: The water supply planning process serves as the foundation of decision-making by regional water planning groups, the TWDB, and policy makers. This exceptional item package includes two requests that would support sound planning for Texas' water future.

First, this item would support the regional water supply planning program with baseline funding in the amount of \$1,295,000 per year. This amount had previously been funded through the Water Assistance Fund, which is now depleted. It also includes an additional \$1,320,000 in annual appropriations for regional water planning grants to be built into future baseline budgets to address 10 new statutory requirements that have been added to the water planning process since 2009. Over this same timeframe, the amount of funds provided to develop the 16 regional water plans has not increased significantly, despite a cumulative engineering sector inflation rate of approximately 50 percent since 2001.

Second, this additional funding includes \$320,000 per year for rural and other outreach to be conducted by regional water planning groups and their technical consultants that assist with plan development. The total cost for this exceptional item would be \$5,230,000 for the FY 2024–25 biennium.

External/Internal Factors: Without this item, the TWDB will be unable to maintain the current levels of funding for regional water plan development. Funding for the regional water planning process would decrease and the regional water supply planning groups would struggle to adequately fulfill statutorily required planning tasks. They may lack the resources needed to develop innovative and/or regionally efficient solutions and may have greater difficulty procuring qualified technical consultants. Ultimately, without this funding, there is a risk of degrading the credibility of Texas' nationally recognized planning processes that ensure the state is prepared to meet Texas' water supply needs during drought conditions.

3. Rural Community Assistance (\$169,869,702)

Description/Justification: This exceptional item package includes three requests that would provide enhanced TWDB assistance to rural communities. The Rural Water Assistance Fund was created by the 77th Texas Legislature to assist rural communities through low-interest loans and grants and technical assistance for water and wastewater projects. Project financing is dependent upon appropriations, and no funds are currently available in this program. First, this item includes \$150 million in project funding through the Rural Water Assistance Fund as well as funding to support technical assistance to rural entities over the full life of a project, from the application phase to

project management after commitment of funds, through the construction and close-out process. Second, the technical assistance portion of this request includes one FTE to manage the Rural Water Assistance Fund Program in addition to approximately \$3 million to be used to contract with an outside entity to provide technical assistance services.

Third, this request includes a \$15 million cash deposit to the Agricultural Water Conservation Fund, established by the 69th Legislature, for further project funding and one additional FTE to support the program. This would allow the agency to continue to provide grants and loans in rural areas of Texas where agriculture is an extremely important sector of the local economy. It will also support the implementation of projects to improve irrigation efficiency such as improving aging canal infrastructure, replacing canals with pipeline systems, installing automatic gates or control systems, installing water monitoring devices, demonstrating the latest water conservation technological advancements, supporting evapotranspiration networks, improving agricultural water conservation best management practices, and other projects that enhance resilience to weather extremes. The new staff will support the program through application solicitation and review, contract management, and ongoing education and outreach.

The total cost for this exceptional item would be \$169,869,702 for the FY 2024–25 biennium, including 14 new FTEs.

External/Internal Factors: Despite the available financial assistance options, the needs of some rural Texas communities are not fully met because program capacities are limited and some communities lack the resources to repay financial assistance in the form of a loan due to aging populations on fixed incomes, limited commercial tax base, and/or limited opportunities for economic development and growth. This funding will help these communities install first-time systems, replace aging infrastructure, and upgrade water and wastewater treatment plants to meet regulatory standards. The Rural Water Assistance Fund provides a low-cost, long-term financing option for water and wastewater projects to small, rural communities with the concept of offering tax-exempt financing to water supply corporations or projects ineligible for tax-exempt financing. Without the infusion of additional

funds for this program, projects for rural entities could be delayed or not funded.

Since the inception of the Agricultural Water Conservation Program, the TWDB has provided over \$110 million in funding commitments to support agricultural water conservation. Without additional project funding, the agency will make its last award of a \$1 million loan and less than \$1.2 million in grants in 2025. Replenishment of the Agricultural Water Conservation Fund is critical because irrigation is the largest water use sector in Texas, accounting for 9.4 million acre-feet and about 53 percent of total water demand in 2020. Water for this purpose is a vital resource to Texas agriculture. In the 2022 State Water Plan, efforts to improve irrigation efficiency and conservation make up 18.7 percent (757,000 acre-feet) of water management strategies for 2030 and, therefore, are integral to providing for future water demands in the state.

4. Data Enhancement and Modernization (\$8,449,554)

Description/Justification: This exceptional item package includes three requests that support the enhancement and modernization of TWDB data. Accurate and robust data characterizing the state’s water resources form the backbone of water-related decision-making in Texas and serve as the foundation for the TWDB’s planning and financing programs. To maximize statewide understanding of water resources in Texas and the usability of data gathered, we must modernize our data infrastructure and enhance data collection to characterize the state’s resources more comprehensively.

The TWDB currently visualizes much of its water data through various standalone data viewers and applications. First, this request includes funding to rebuild Water Data for Texas—the agency’s website with the strongest following and its most comprehensive resource for water-related conditions across the state—to allow for the integration of multiple viewers and applications into a single, accessible, and unified data visualization platform. Water Data for Texas was developed in 2011 and lacks the modern features necessary to support the data-intensive nature of current agency programs.

Second, this request will facilitate an accelerated, complete buildout of the state’s hydrometeorological network—the TexMesonet—by 2028, including development

of and support for a statewide reference evapotranspiration dataset (which will specifically collect data on the transfer of water from the surface of the earth [evaporation] and from vegetation [transpiration] to the atmosphere), expanded statewide soil condition monitoring, and associated tools through both network expansion and collaboration with local, state, and federal entities. This item has an associated legislative request that would provide specific statutory authority for the TexMesonet.

Access to evapotranspiration and soil moisture data across the state is currently limited, and enhanced data available through coordinated statewide monitoring would provide wide-ranging benefits. Evaporation-based irrigation scheduling is an extremely cost-effective water conservation strategy, and enhanced data would improve the effectiveness of irrigation and water management activities. While some regional resources, including TexasET, are currently available, there is not a long-term, reliable support system in place to properly operate and maintain statewide monitoring. The resources requested in this item will provide a dedicated, dependable method to properly operate and maintain statewide evapotranspiration monitoring.

Soil condition data enables farmers to precisely monitor their yields and determine which areas of a field require heavier irrigation and where irrigation savings can be realized. Additionally, soil condition data can be used to improve flood forecasts and runoff models, refine water supply and drought prediction tools, enhance wildfire prediction and prescribed burning condition outlooks, and inform the response of government agencies and emergency managers to a full range of emergencies and disasters. While remote sensing products are becoming more widely available, ground-based soil moisture and temperature measurements are indispensable in the process of developing, validating, and advancing datasets derived from satellites and models.

Third, this request will provide funding for three key program areas to expand monitoring of the state’s groundwater resources and further the TWDB’s understanding of groundwater conditions in Texas. The Recorder Well Program provides continuous water level data collected for groundwater management and drought triggers; additional funding and staff are needed to expand the recorder well network and for ongoing site maintenance, data collection, and resource support. The Springs Monitoring

Program provides data on aquifer conditions and ground-water-surface water interactions important for ground-water modeling, planning, and management; additional funding would expand these activities. The Groundwater Quality Program has experienced increased analysis costs for monitoring groundwater conditions and providing modeling inputs; additional funding will assist the agency in paying for required sampling needed to fulfill performance measures and for special groundwater studies. These three program areas help to develop critical inputs for the state water planning process and for managing groundwater resources.

The total cost for this exceptional item would be \$8,449,554 for the FY 2024–25 biennium, including 25 new FTEs.

External/Internal Factors: This exceptional item allows the agency to leverage existing applications and programs—including Water Data for Texas, Water Data Interactive, TexMesonet, the Groundwater Recorder Well Program, the Springs Monitoring Program, and other resources—to serve as the framework for a modernized and comprehensive data collection and dissemination platform. Funding would provide resources to build on and enhance current scientific efforts to characterize the state’s water resources and enable the agency to more effectively present data that are tailored to meet stakeholder needs using state-of-the-art technology.

Without this item, full buildout of the TexMesonet would not be achieved until at least 2034. In addition, the agency’s ability to add new information to existing platforms and to develop the data-driven applications and value-added products our customers expect is limited. Further, groundwater data collection activities will be limited or reduced, resulting in landowners, decision-makers, and stakeholders having insufficient data to support groundwater resource planning and management.

5. Flood Program Resources (\$394,454,848)

Description/Justification: This exceptional item package includes requests that support ongoing activities of the TWDB’s flood program. First, this request includes \$375 million in new project funding for the Flood Infrastructure Fund program, which provides grants and loans for drainage, flood mitigation, and flood control projects. Once the first state flood plan is adopted by the TWDB

in 2024, the Flood Infrastructure Fund may only be used to provide financing for flood projects included in the state flood plan. In addition, this request includes general revenue to support administration of the Flood Infrastructure Fund program as well as the regional and state flood planning and flood science and mapping activities funded through the Texas Infrastructure Resiliency Fund. The total cost for this exceptional item would be \$394,454,848 for the FY 2024–25 biennium. Although there is a request for 85 FTEs, 74 of the FTEs represent existing staff for which the TWDB is seeking a change in the method of finance. Therefore, the request is only seeking 11 new FTEs.

External/Internal Factors: The inaugural funding cycle of the Flood Infrastructure Fund saw demand of over \$2 billion, while only \$770 million in project funding was available. We anticipate that the initial funding allotment could be fully committed by the Board by spring 2023, and only a modest amount of funds may be available for future use as the zero percent loans are repaid over the next 10 to 30 years. Additional funds would work toward implementation of future flood mitigation projects and strategies, including those recommended by the regional flood planning groups. Without additional funds for projects and general revenue to support staff administration of the agency’s flood program, critical projects that could save life and property from flooding will continue to go unfunded.

6. Debt Service and Match (\$130,300,920)

Description/Justification: This exceptional item includes funding to pay debt service on bonds used to support the Economically Distressed Areas Program and match funds to support the federal Clean Water and Drinking Water State Revolving Fund programs. EDAP provides grants and loans for water and wastewater services in economically distressed areas where services do not exist or existing systems do not meet minimum state standards. General revenue would provide the match requirement for the Clean Water SRF and Drinking Water SRF grants from the U.S. Environmental Protection Agency. The total cost for this exceptional item would be \$130,300,920 for the FY 2024–25 biennium.

External/Internal Factors: Over the last three decades, the TWDB has made great strides in assisting disadvantaged communities through the Economically Distressed Areas Program, with significant financial assistance provid-

ed for first-time water and wastewater services. Without this item, projects in economically distressed areas could be delayed or not funded. Also, projects that previously received TWDB planning, acquisition, and design funding would not have EDAP grant and/or loan funding to begin and complete construction.

For state fiscal year 2023, both the Clean Water SRF and Drinking Water SRF programs have received requests for funding that is several times the amount of loan funding available. Without the provision of match as general revenue, the TWDB would be able to meet less of the current loan demand. Providing the state match through general revenue will allow the TWDB to increase the overall loan capacity to meet this significant demand throughout Texas. Providing funds for the match instead of issuing bonds allows the Clean Water SRF and Drinking Water SRF to offer a lower interest rate on loans to wastewater and drinking water systems throughout Texas. It would also allow the agency to increase the total amount of loans both programs may offer each year because additional debt service coverage is not required on funds borrowed for the match.

7. Shared Technology Services (\$3,904,206)

Description/Justification: The TWDB utilizes managed IT services through the Department of Information Resources' (DIR's) Shared Technology Services (STS) Program. In addition to information resources in the State Data Centers, the TWDB consumes cloud computing services and stores data in both Amazon Web Services (AWS) and Microsoft 365/Azure as part of the STS Program's public cloud offering. Beginning in FY 21, the agency forecasted increases in STS spend from the continuation of Microsoft 365 services, year over year AWS growth related to FTE increases and new legislatively mandated flood programs, and changes to the STS Program, specifically, the integration of a public cloud manager vendor to provide better security and support for the TWDB public cloud environment. The forecasted increases were submitted to DIR as part of the FY 22–23 Legislative Appropriations Request process and were approved, but the agency did not receive the necessary funding, only the associated capital authority increase. This has resulted in a significant STS budget shortfall for the agency. Looking forward to FY 24–25, the agency is again forecasting significant growth in STS spend due to continued growth

and maturity of new flood programs, FTE increases, geographic imagery purchases, and Software-as-a-Service purchases that are required to be made through the STS Program.

This exceptional item funds forecasted additional biennial baseline costs to meet the TWDB's growth-related increases from new, legislatively mandated flood programs and the STS Program's integration of a public cloud manager vendor in FY 2022–23. This request incorporates the anticipated growth in FY 2024–25 from continued growth and maturity of the flood programs, geographic imagery purchases, and Software-as-a-Service purchases now required through the Department of Information Resources' STS Program. The total cost for this exceptional item would be \$3,904,206 for the FY 2024–25 biennium.

External/Internal Factors: The TWDB is legislatively mandated to participate in the STS program provided by DIR. Forecasted costs for the biennium are approved by DIR and passed through to the TWDB. Without this item, the agency would need to divert funds from other activities to cover the increased expense owed to the DIR.

Rider Requests

The TWDB's Legislative Appropriations Request for Fiscal Years 2024–2025 included proposed revisions to certain riders, including general updates to fiscal years and amounts where appropriate as well as deleting certain riders where funds are exhausted and/or work has been completed.

Since the submission of the Legislative Appropriations Request, TWDB staff have proposed two additional rider revisions.

Rider 2 – Capital Budget

The TWDB maximizes its Strategic Mapping capital appropriation by partnering with other state agencies and local governments in the acquisition of aerial imagery through DIR (Shared Technology Services) aerial imagery contracts. To date, there are 35 individual government agencies across Texas subscribing to this service. The 87th Session General Appropriations Act, Article IX, Section 14.03(h)(4) requires that state agencies obtain written approval from the Legislative Budget Board to transfer appropriations into the data center services capital project. DIR has

contracted with imagery vendors to improve the procurement process when acquiring Strategic Mapping data, but the requirement to obtain approval from the Legislative Budget Board can cause delayed payments to these vendors. Therefore, the TWDB proposes a revision to Rider 2 that would allow a transfer of up to 25 percent or \$1,000,000 from the Strategic Mapping capital budget to the data center services (Shared Technology Services) capital budget without approval by the Legislative Budget Board strictly for the purpose of data acquisition. This would ensure timely payments are made to vendors.

Rider 4 – Authorized Transfers and Appropriations: Water Assistance Fund

The TWDB's Rider 4 currently allows the agency to transfer funds from general revenue into the Water Assistance Fund for certain purposes related to water science and water planning activities, including grants for regional water planning groups and studies regarding groundwater modeling and brackish groundwater zone designation. In addition to these uses, the TWDB proposes a revision that would add another \$1,000,000 per fiscal year of base general revenue funding (\$500,000 from A.1.1 and \$500,000 from A.1.2) for research grants to this rider. General revenue dollars must be expended by the end of the biennium, but research activities can be impacted by external factors that pose challenges for completing work within a two-year window. Transferring funds for research grants from general revenue to the Water Assistance Fund would allow the TWDB to use any unobligated and unexpended balances, ensuring that all dollars are expended for the intended purpose as opposed to lapsing dollars due to procurement or professional service vendor delays.

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