



Supplemental Comments by the Sierra Club - Lone Star Chapter on the Texas Water Development Board's Development of Rules to Implement HB 3605 (Consideration of System Water Losses in Making Financing Commitments) – Submitted by Ken Kramer, Water Resources Chair – 1/31/14

These comments are supplemental to the comments submitted to the Texas Water Development Board (TWDB) Directors and staff by the Sierra Club on November 4, 2013 for the briefing to the Board on the provisions of HB 3605. Those earlier comments are provided as an attachment to these supplemental ones. As summarized below, the Sierra Club continues to have the same concerns expressed in the previous comments regarding some initial agency staff positions on issues involving implementation of HB 3605, although we do agree with certain staff proposals. We also have some additional observations about the appropriate ways of carrying out the requirement of HB 3605 and achieving its potential to significantly reduce water loss in Texas.

To reiterate or restate the main points of our earlier comments:

We agree with the following Board staff recommendations regarding the implementation of HB 3605:

- The appropriate measure of water loss should be total loss per connection per day (because both apparent and real water losses are important areas that utilities need to address).
- Measures of total loss per connection per day need to be considered separately for systems with less than 32 connections per mile and systems with 32 or more connections per mile (based on information from water utility industry studies).
- Different thresholds should be set for utilities serving populations of 10,000 or less; those serving 10,001 to 49,999; 50,000 to 99,999; and 100,000 or more (this is in keeping with the language and intent of the legislation).

We have continuing concerns about some of the other TWDB staff recommendations:

- We disagree with the initial staff idea that having a water loss in the top 20% (in each service population category) should be the appropriate threshold for requiring a water utility to address water loss when applying for state financial assistance. That is not going to reduce water loss on the scale required in a state perennially challenged by drought and growth pressure. A more appropriate threshold would be to require any water utility in the top population category that has an above-average level of water loss to come under the HB 3605 provisions, especially since this is where the volume of water lost is likely to be the greatest. Somewhat more flexible thresholds in a tiered fashion might be set for water utilities serving the smaller population categories, especially those in the 10,000 or less population category.
- The provisions in HB 3605 to address water loss should not be met solely by a requirement upon a utility to conduct a detailed water loss assessment. Such a water loss assessment – if it has not been performed before and submitted to the Board under the statutory water audit requirements – should be required as a precondition for state financial assistance (in order to pinpoint accurately how to address water loss by that utility). But actual commitments and actions to eliminate or reduce real water losses – with state financial assistance to do so – should be required to meet the spirit of HB 3605 and to have a positive and tangible impact in meeting water supply needs. The only exception to this requirement should be where true emergency water needs must be met.

- We continue to have concerns about any interpretation of HB 3605 that asserts that TWDB has “flexibility in addressing water loss in cases where...a utility is already addressing water loss through other means...or...a utility cannot afford additional debt.” Flexibility in meeting true emergency situations makes sense, but going beyond that appears to us to exceed statutory intent. While it might sound logical to say that the Board should consider whether “a utility is already addressing water loss through other means...” – if those utility actions are based on an incomplete or otherwise faulty water loss audit then those actions may not be effective in bringing that utility under the threshold set by the Board to trigger HB 3605 requirements. With regard to the possibility for “flexibility” where “a utility cannot afford additional debt” this is the greatest stretch in interpreting HB 3605. Reducing water loss is important in making sure that existing water supplies are not wasted, but it also important directly and indirectly in assuring that utilities are recovering their full potential for revenue from those existing supplies.

In addition to the points above that have been made previously, the Sierra Club suggests that the following ideas be incorporated into the rules proposed and adopted to implement HB 3605:

- In determining the water loss of a utility seeking state financial assistance the most recent water audit conducted by that utility should be used rather than simply using the 2010 water audit data for all utilities. It is quite clear from the passage of HB 857 in 2013 – which set an annual water audit requirement for utilities with 3300 connections or more – that the Legislature wants both utilities and TWDB to have the most up-to-date information on water loss possible. Using four-year old data to implement HB 3605 in situations where later water loss data is available is at odds with action on water loss in the last two state legislative sessions. Using the latest data available will address to some extent the issue of how to deal with utilities already addressing their water loss. If a utility which found a high water loss in its 2010 audit conducted a later audit that demonstrated sufficient progress in reducing water loss, then that utility may not trip over the threshold that would bring it under HB 3605 provisions. In such a case, using the 2010 audit data would “penalize” a utility that was addressing its water loss levels.
- Rules adopted to implement HB 3605 should include the option for TWDB to require independent, third-party water loss audits of water utilities in situations where TWDB staff question the validity of a water loss audit previously submitted by an applicant for state financial assistance. This provision could be significant in making sure that state financial assistance is provided to solve the actual water loss problems of a utility.

In conclusion, the Sierra Club wants to underscore the fact that the Texas Legislature has shown a strong concern about water loss in several laws – not just HB 3605 – enacted in the last several years. At the same time the Legislature has provided (and the state’s voters have approved) major new sources of funding for water projects – including the \$6 billion bond money in 2011 and SWIFT and SWIRFT in 2013. These are not unrelated actions. The Legislature and the people want TWDB to have the funds to meet the water needs of Texas, but they also want the utilities who seek state financial assistance to manage their water supplies well and avoid wasting water and money. Texans are outraged when they see major cities in the state reporting double-digit percentages of water loss, and they want something done about this waste of a precious resource. Current levels of water loss are unacceptable.

If water loss can be effectively reduced, and water needs still exist, it will be much easier for Texans to support taking additional steps to meet those needs. Thus, TWDB must confront water loss by Texas utilities in an effective manner. That requires boldness on the part of the agency that will produce results. The Texas Legislature has given TWDB the tools and the money to help utilities reduce water loss. There has never been a better time for the agency to act decisively. You have the support of state legislators and the public to do so.



Comments on Texas Water Development Board Work Session Agenda Item 4 (November 4, 2013) – Prospective Rulemaking for HB 3605 (Concerning Consideration of System Water Losses in Making Financing Commitments) – Submitted by Ken Kramer, Water Resources Chair, Lone Star Chapter

The 83rd Texas Legislature demonstrated considerable interest in the topic of system water losses as it passed various pieces of legislation dealing with identifying, reporting, evaluating, and curbing such losses. One of those important legislative enactments was the HB 3605, by Rep. Burnam and others in the House and by Sen. Hegar in the Senate, a bill which had widespread bipartisan support. The Sierra Club worked on and strongly supported HB 3605 during the legislative session.

The thrust of Section 1 of HB 3605 – the section dealing with water loss – is that a retail public water utility securing financial assistance from the Water Development Board shall use a portion of that assistance or additional financial assistance from the Board to mitigate the utility’s system water loss if it meets or exceeds the threshold set by Board rule. **The ultimate success or failure of HB 3605 in curbing water waste and securing additional revenue for water utilities will be heavily dependent upon the threshold set by the Board for applying the new law’s requirements and upon how proactive the Board will be in using this new authority and its funding programs to reduce real and apparent water losses. In our opinion the Board needs to “seize the moment” and aggressively act to help utilities curb system water losses, as we believe the Legislature intended.**

It is in that context that we have reviewed the memo from Board staff to Board members regarding this work session agenda item. We appreciate the background information on water losses that the Board staff has provided, and we agree with some of their recommendations regarding implementation of HB 3605; but we have questions about some of the recommendations and concerns about others.

First, we agree with the following recommendations of the Board staff regarding the implementation of HB 3605:

- The appropriate measure of water loss should be total loss per connection per day (because both apparent and real water losses are important areas that utilities need to address).
- Measures of total loss per connection per day need to be considered separately for systems with less than 32 connections per mile and systems with 32 or more connections per mile (based on information from water utility industry studies).
- There needs to be different thresholds set for utilities serving populations of 10,000 or less; 10,001 to 49,999; 50,000 to 99,999; and 100,000 or more (this is in keeping with the language and intent of the legislation).

But we have questions or concerns about the following recommendations of the Board staff:

- The Board staff says that having a water loss in the top 20% [presumably in each service population category] would be an appropriate threshold for requiring expenditures to address water loss – This is merely stated as fact without any background discussion justifying this threshold other than that it is the current level at which existing Board policy requires certain additional actions by applicants. Why choose this as the threshold rather than, for example, require any applicant with a water loss above the average loss for Texas water utilities to come

under the provisions of HB 3605? Our understanding, based on the reported results of water loss audits from 2010, is that setting the threshold at the latter level could potentially bring slightly more than one-third of Texas water utilities under the coverage of HB 3605, if they applied for state financial assistance for a water project, subject of course to where each of those utilities might rank in relation to others in its respective size category. What are the implications for addressing water loss in Texas – in terms of avoiding water waste or enhancing water utility revenue – from choosing the less expansive threshold recommended by the Board staff rather than a more expansive threshold such as the inclusion of all systems with above average loss in their respective service category?

- The Board staff recommends that appropriate use of financial assistance to address water loss include conducting a detailed water loss assessment and pipe and meter replacement. We don't disagree with that per se, but is the Board staff implying that other financial assistance from the Board might be granted to the applicant before a detailed water loss assessment is conducted or that such an assessment might be the only type of financial assistance to address water loss that might be provided? At the least this recommendation needs to be clarified. At this time we would take the position that in no circumstance other than where an emergency water supply is needed should state financial assistance for a water project be provided before a detailed water loss audit meeting quality control standards has been conducted and reviewed by Board staff and the results of that audit have been used to develop a plan that Board staff concludes will address that water loss effectively. This statement is not meant to imply that an entity already required by state law to conduct a water loss audit needs to perform an additional, separate audit if the previous audit has the level of detail that Board staff deems acceptable and if that audit meets the quality control standards established by the Board for water loss audits.
- The Board staff recommends “flexibility in addressing water loss in cases where...a utility is already addressing water loss through other means...or...a utility cannot afford additional debt.” We are not convinced that the new statute (HB 3605) provides that level of flexibility. Flexibility in meeting emergency situations makes sense, but going beyond that appears to us to exceed statutory intent. While it might sound logical to say that the Board should consider whether “a utility is already addressing water loss through other means...” – if those utility actions are based on an incomplete or otherwise faulty water loss audit then those actions may not be effective in bringing that utility under the threshold set by the Board to trigger HB 3605 requirements. Therefore, we would urge that any such “flexibility” in this type of situation – if it is deemed statutorily permissible – only be considered if it is based again on a detailed water loss audit and plan that provides strong assurance that a utility is truly addressing its water losses and will be effective within a reasonable time period in avoiding water losses that exceed the threshold set by the Board for applying the relevant provisions of HB 3605. With regard to the possibility for “flexibility” where “a utility cannot afford additional debt” this appears to us to be the most slippery slope in interpretation of HB 3605. Addressing water loss is important in making sure that existing water supplies are not wasted, but it also important directly and indirectly in assuring that utilities are recovering their full potential for revenue from those existing supplies. A speaker at a recent Board seminar on water loss pointed out the revenue gains to water utilities in other parts of the country from addressing their respective water losses. A utility may well be able to afford additional debt to correct water losses that will gain significant new revenue for the utility. But again we question whether HB 3605 even allows the “affordability of additional debt” to be considered an issue in implementation of the law.

In conclusion let us point out that on the eve of what is anticipated to be the passage of Prop 6 and the creation of new funding mechanisms for water projects in the state plan, legislators and the public are putting their trust in the Texas Water Development Board to see that state financial assistance for water projects will address true water needs. We don't believe that Texans want to see that financial assistance provided to utilities which are not addressing their respective water losses aggressively and effectively.