



# Texas Water Journal

Volume 14 Number 1 | 2023





# Texas Water Journal

Volume 14, Number 1

2023

ISSN 2160-5319

[texaswaterjournal.org](http://texaswaterjournal.org)

THE TEXAS WATER JOURNAL is an online, peer-reviewed, and indexed journal devoted to the timely consideration of Texas water resources management, research, and policy issues. The journal provides in-depth analysis of Texas water resources management and policies from a multidisciplinary perspective that integrates science, engineering, law, planning, and other disciplines. It also provides updates on key state legislation and policy changes by Texas administrative agencies.

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The Texas Water Journal is published in cooperation with the Texas Water Resources Institute, part of Texas A&M AgriLife Research, the Texas A&M AgriLife Extension Service, and the College of Agriculture and Life Sciences at Texas A&M University and the Bureau of Economic Geology in the Jackson School of Geosciences at The University of Texas at Austin.



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*Cover photo:*

Santa Elena Canyon, Big Bend National Park, Texas.

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## Commentary: 88th Texas State Legislature: Summaries of Water-Related Legislative Action

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**Editor-in-Chief's Note:** September 1 of every odd-numbered year is the date when most new legislation from the most recent session of the Texas Legislature typically goes into effect. With this in mind, the Texas Water Journal invited seven organizations that work closely with the Texas Legislature to provide their take on the changes to Texas water policy and law that were made during the 2023 session. The opinions expressed in these summaries are the opinions of the individual organizations and not the opinions of the Texas Water Journal, the Texas Water Resources Institute, or the Bureau of Economic Geology.

Organizations:

- Texas Water Conservation Association
  - Texas Alliance of Groundwater Districts
  - Texas Water Foundation
  - Sierra Club, Lone Star Chapter
  - Texas Water Infrastructure Network
  - Environmental Defense Fund
  - Texas 2036
- 

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Received 21 July 2023, Accepted 10 August 2023, Published online 31 August 2023.

Citation: Kirkle SR, Martinsson LK, Schlessinger SR, Ortiz AR, Fowler PL, Puig-Williams V, Mazur JB, Votteler TH. 2023. Commentary: 88th Texas State Legislature: Summaries of Water-Related Legislative Action. Texas Water Journal. 14(1):105-135. Available from: <https://doi.org/10.21423/twj.v14i1.7167>.

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## Terms used in paper

<b>Acronym/Initialism</b>	<b>Descriptive Name</b>
AG	Attorney General
ASR	Aquifer Storage and Recovery
CEO	Chief Executive Officer
Ch	Chapter
CCN	Certificate of Convenience and Necessity
D	Democrat
DFC	Desired Future Condition
EDAP	Economically Distressed Areas Program
EDF	Environmental Defense Fund
EFAG	Environmental Flows Advisory Group
ETJ	Extraterritorial Jurisdiction
GCD	Groundwater Conservation District
GMA	Groundwater Management Area
HB	House Bill
IIJA	Infrastructure Investment and Jobs Act
LLC	Limited Liability Corporation
PUC	Public Utility Commission of Texas
R	Republican
RWPG	Regional Water Planning Group
SB	Senate Bill
SJR	Senate Joint Resolution
SOAH	State Office Administrative Hearings
SWIRFT	State Water Implementation Revenue Fund for Texas
SWIFT	State Water Implementation Fund for Texas
SWQS	Surface Water Quality Standards
TAGD	Texas Alliance of Groundwater Districts
TCEQ	Texas Commission on Environmental Quality
TEC	Texas Ethics Commission
TPDES	Texas Pollutant Discharge Elimination System
TPWD	Texas Parks and Wildlife Department
TWCA	Texas Water Conservation Association
TWDB	Texas Water Development Board
TXPWC	Texas Produced Water Coalition
TXWIN	Texas Water Infrastructure Network
US	United States
WAM	Water Availability Model
WSTF	Water Supply for Texas Fund

## TEXAS WATER CONSERVATION ASSOCIATION SUMMARY OF THE 88TH LEGISLATIVE SESSION

By Sarah R. Kirkle, Director of Policy and Legislative Affairs

The [Texas Water Conservation Association](#) (TWCA) is a non-profit association of water professionals and organizations working to promote sound water policy in Texas. TWCA's members provide water and/or wastewater services to a great majority of the state and include river authorities, cities, groundwater conservation districts, flood/irrigation/drainage/water districts, industries, consultants, and others interested in Texas water policy and development.

After a fast and furious 140 days, the 88th Texas Legislature adjourned *sine die*. Governor Abbott has already called the Legislature Back for two special sessions, with more expected over the interim. The Legislature headed into the 88th regular session with a nearly \$33 billion surplus, making the budget the most significant topic on the legislative docket, followed by various social issues. Issues that surrounded the budget included property tax reform and funding for retired teachers, state employees, higher education, parks, broadband, electric generation, and water.

Legislators filed 8,345 bills and joint resolutions, about 14% more than in the 87th session. Only 1,256 of those bills passed both chambers by *sine die*, providing for a 15% percent bill passage rate and resulting in the 88th session having the highest number of bills filed and lowest passage rate in recent memory ([Telicon 2023](#)). Governor Abbott vetoed 76 bills (nine of which TWCA tracked), second only to Rick Perry in 2001 ([Legislative Reference Library 2023](#)). In many cases, the Governor's veto proclamation noted the importance of the vetoed bill and invited the Legislature to reconsider the bill after the passage of legislation addressing property tax or education reform.

On the waterfront, this session marked the formation of the first-ever House Water Caucus, chaired by Rep. Tracy O. King. The goals of the caucus include educating legislative members and staff on water issues, elevating water issues as a priority within the Legislature, and cultivating the next generation of water champions. Seventy-three of the 150 members of the Texas House joined the Water Caucus, demonstrating the importance of water issues across the state ([Texas Water Foundation 2023](#)).

As in past sessions, TWCA closely followed bills that could impact its members, tracking 754 bills and designating 61 of those bills as a high priority. One hundred nineteen, or about 16% of our tracked bills, made it to the finish line, with 16 of those being a high priority. The most significant bills that may interest water professionals are summarized below.

### Water infrastructure

After an interim filled with discussions about infrastructure woes, such as line breaks and boil water notices due to extreme weather events, the Legislature passed Senate Bill (SB) 28 and Senate Joint Resolution (SJR) 75 (Perry/T. King) to create the Texas Water Fund. This umbrella fund allows the Texas Water Development Board (TWDB) to disburse money to other funds and programs it administers, such as the State Water Implementation Fund for Texas and the Rural Water Assistance Fund. The bill also creates the New Water Supply for Texas Fund and includes a goal for TWDB to fund 7 million acre-feet of new water supplies by 2033 through eligible projects such as desalination, aquifer storage and recovery, and use of produced water outside the oil and gas arena. SB 28 requires a portion of the Texas Water Fund to be used for water infrastructure projects for rural political subdivisions and municipalities with a population under 150,000; projects for which all permitting is complete; a statewide water public awareness program; water conservation strategies; and water loss mitigation projects. The bill requires all recipients of financial assistance to submit a water conservation plan. TWDB must also establish a technical assistance program to assist retail public utilities with water loss audits and post certain water loss information on its website ([SB 28 2023](#)).

SJR 75, which amends the Texas Constitution to create the Texas Water Fund, must be approved by Texas voters this November before funding may be accessed. The resolution provides that not less than 25% of the initial \$1 billion appropriation to the Texas Water Fund be used for eligible projects in the New Water Supply for Texas Fund ([SJR 75 2023](#)).

Beyond SB 28/SJR 75, the Legislature funded other water infrastructure priorities through the state budget and supplemental appropriations bill ([HB 1](#) and [SB 30](#) – Bonnen/Huffman). Most significantly, this included \$625 million to the Flood Infrastructure Fund, \$550 million toward the coastal spine, and \$125 million in match funds for the State Revolving Funds. SB 469 (Springer/T. King) also updated the definition of “rural political subdivision” to access TWDB programs ([SB 469 2023](#)).

Advocacy for investment in water infrastructure also brought about unprecedented collaboration within and beyond the water community. TWCA partnered with other key water associations to form a water infrastructure coalition to help advocate for water, wastewater, and flood infrastructure investment. Despite very different water needs and priorities, the coalition

of 24 associations and 47 individual districts, organizations, and firms share a common goal of ensuring our water future. The water community is thankful for the leadership of our chairmen – Senator Charles Perry and Representative Tracy O. King – in passing and securing an appropriation for SB 28/SJR 75, and all realize the conversation around water infrastructure and funding needs is just beginning.

### Sunset review of water agencies

All of the key water-related agencies – TCEQ, TWDB, and PUC – underwent review by the Sunset Advisory Commission leading into this session. Sunset review is a comprehensive review process identifying key management and statutory changes intended to make the agencies operate more efficiently and effectively. Complete summaries of the Sunset bills and adopted management recommendations for each of these agencies are available on the Sunset website, and a synopsis of relevant water-related provisions in each Sunset bill is below

- **TCEQ Sunset: SB 1397 (Schwertner/K. Bell)** requires periodic review of environmental flow standards by the Environmental Flows Advisory Group (EFAG), specifies the criteria for those reviews, and requires a biennial statewide work plan to prioritize and standardize review of environmental flow standards. The bill requires TCEQ to submit a biennial report to the EFAG and removes the abolishment date for EFAG & the Science Advisory Committee. The bill expands various public notice and outreach requirements related to permits, requires additional specificity in calculating compliance history, and increases administrative penalty authority from \$25,000 to \$40,000 for certain violations. The bill requires an enforcement diversion program for small businesses and local governments. The bill also requires notice of the proposed creation of a new water district to each representative and senator representing an area in the proposed district boundaries ([SB 1397 2023](#)).
- **TWDB Sunset: HB 1565 (Canales/Perry)** requires each regional water planning group to include in its regional plan certain information (expenditures of sponsor money, status of permit applications, and status of phases of construction) for large projects, including reservoirs, interstate water transfers, innovative technology projects, desalination, and other large projects as determined by TWDB. The bill allows a regional water planning group to plan for a drought worse than the drought of record and allows TWDB to adopt a risk-based review of plans and specifications if a professional engineer makes specific findings ([HB 1565 2023](#)).
- **PUC Sunset: HB 1500 (Holland/Schwertner)** clarifies that a temporary manager of a water utility is one year, and

the term may be renewed for another year or a reasonable time if the utility is undergoing sale or transfer ([HB 1500 2023](#)).

### Surface and groundwater

TWCA's Surface Water Committee and Groundwater Committee, which each have more than 150 members representing all facets of the water community, met in advance of the 88th session and considered a wide range of issues, applying a 90% consensus requirement for all proposals. The committees ultimately recommended that TWCA offer specific legislation related to surface water availability models and support nine other initiatives in the groundwater space. House Bill (HB) 2460 (T. King/Perry) requires TCEQ to update WAMs for five river basins ([HB 2460 2023](#)). TWCA has consistently supported WAM updates and hopes to eventually obtain funding to update all the WAMs. Some WAMs are more than 30 years out-of-date and do not reflect potential new droughts of record. Unfortunately, while the bill passed the Legislature, the budget did not include funding for updates, so TCEQ is not required to initiate updates.

Other notable water-related bills that passed include:

- **HB 692 (Rogers/Springer)** allows authorization by rule for land application of dairy waste and disposal of dairy waste from a concentrated animal feeding operation into a control or retention facility ([HB 692 2023](#)).
- **HB 1971 (Ashby/Springer)** provides that for a GCD board with 10 or more directors, a concurrence of a majority of directors eligible to vote is sufficient to take action on a groundwater permit application or amendment. The bill prohibits a director who files a conflict-of-interest affidavit from voting on or attending a closed meeting unless a majority of the directors are also required to file an affidavit. HB 1971 provides that a GCD's final permit decision must be in writing and adopted within 180 days after receipt of a proposal for decision. If the GCD has not finalized its decision by then, the recommendations of the administrative law judge are deemed adopted by the GCD and are not appealable or subject to a motion for rehearing. The bill prohibits continuances from exceeding time limits for issuing a final decision; provides for timelines and consolidation of motions for rehearing; and provides procedures for appealing a decision ([HB 1971 2023](#)).
- **HB 2443 (Harris/Perry)** allows a person with a real property interest in groundwater to petition a GCD where the property interest is located to adopt or modify a rule. The bill requires a GCD to prescribe the form for a petition and procedures for submission, consideration, and disposition. The bill provides a 90-day timeline for a GCD to deny the petition or engage in rulemaking ([HB 2443 2023](#)). (TWCA-supported bill)

- **HB 2815 (Jetton/Creighton)** changes TCEQ approval, petition processes, and confirmation elections for district creation and initial directors. The bill changes authorization thresholds for assessments, taxes, fees, or bonds and changes the per diem of directors from \$150 per day to not exceed the legislative per diem, which is currently \$221. HB 2815 provides that a special law authority may not set the annual limit on fees for a director at an amount greater than would be produced by 60 days of service per year at the maximum daily rate. The bill allows the use of a county website for online meeting notices and excludes the personal email of a director from public information. The bill makes various changes to bond election requirements and TCEQ review of the economic feasibility of bonds. HB 2815 amends requirements for dividing or consolidating a district and adds notice requirements for property sold or conveyed within a district. The bill adds requirements to allocation agreements, amends the qualifications of directors, and repeals certain provisions regarding the conversion of a municipal utility district, vacancies, and solid waste ([HB 2815 2023](#)).
- **HB 3059 (T. King/Perry)** increases the export fee cap for tax- and fee-based GCDs to 20 cents per thousand gallons exported and provides that the cap on the export fee or existing 50% surcharge increases at 3% per year. The bill allows a special law district to charge an export fee or surcharge in accordance with either special law or Ch. 36, Water Code. The bill requires any new export fee or increase in an existing export fee or surcharge to be approved by a GCD board after a public hearing. HB 3059 authorizes a GCD to use fees to maintain the operability of wells significantly affected by groundwater development, among other purposes. The bill provides that funds obtained from the increase in an export fee on or after January 1, 2024. These funds may only be used to maintain the operability of wells significantly affected by groundwater development, to develop and distribute alternative water supplies, or to conduct aquifer monitoring, data collection, or science ([HB 3059 2023](#)).
- **HB 3232 (Rogers/Perry)** provides that if a retail public utility service is integrated into a regional service, TCEQ may enter into a compliance agreement with the regional provider and not initiate an enforcement action for existing or anticipated violations resulting from the operation due to service integration ([HB 3232 2023](#)).
- **HB 3278 (Price/Blanco)** requires GCDs to submit supporting materials, including new or revised model run results, to the GCD representatives in the GMA and be made publicly available on a website on behalf of the GMA. The bill requires information to be posted for at least 30 days before GCDs may reconvene for a joint planning meeting to receive comments and adopt a final DFC. The bill requires that the explanatory report include reasons why the GMA did not incorporate into the DFC comments offered during the public comment period or joint planning meeting ([HB 3278 2023](#)). (TWCA-supported bill)
- **HB 3810 (Landgraf/Perry)** requires a nonindustrial public water supply system providing water for public or private use to notify TCEQ of an unplanned condition that has caused an outage or issuance of a do-not-use, do-not-consume, or boil water notice. The bill allows TCEQ to partner with the Texas Department of Emergency Management in administering the notification requirement. The bill does not require a person in charge of a nonindustrial public water supply system to provide notice of a weather or emergency alert, warning, or watch issued by specific state or federal agencies ([HB 3810 2023](#)).
- **HB 4256 (Murr/Blanco)** requires TCEQ to administer a grant program for plugging certain wells in Pecos County. The bill sets out program eligibility and requires funds to be awarded to a contractor or subcontractor on a list of approved well pluggers maintained by the Railroad Commission ([HB 4256 2023](#)).
- **SB 1289 (Perry/T. King)** provides that a wastewater treatment facility that treats domestic wastewater for reuse may dispose of treated wastewater without a permit if the facility disposes through a collection system and has the consent of the operator of the system and treatment facility. The bill clarifies that the owner of a reclaimed water production facility may not be required to own a wastewater treatment facility permitted by TCEQ and requires TCEQ to adopt rules ([SB 1289 2023](#)). (TWCA-supported bill)
- **SB 2440 (Perry/Burrows)** requires a plat application to attach a statement certifying adequate groundwater availability for a proposed subdivision. The bill allows a municipality or county to waive this requirement if the authority determines there is sufficient groundwater in the vicinity of the proposed subdivision and the entire tract is supplied by groundwater from certain aquifers, or if the proposed subdivision divides the tract into not more than 10 parts. A municipality or county can require the certification of groundwater if it determines the proposed subdivision is part of a series of subdivisions from an original tract that collectively includes more than 10 parts ([SB 2440 2023](#)).

### Transparency and government operations

The Legislature passed several bills related to public information and transparency:

- **HB 3033 (Landgraf/Zaffirini)** defines business day for purposes of the public information law. Allows the AG

to require training of a public official if the governmental body has failed to comply with legal requirements. The bill provides that some exceptions to public disclosure do not apply if related to specific elections and adds an exception for attorney general settlement negotiations. HB 3033 provides limitations on a requestor of public information who has exceeded certain limitations and allows a governmental body to request photo identification from a requestor. The bill requires requests to the AG to be submitted electronically and lists exceptions. The bill adds requirements for notifying a requestor of the status of a request. The bill also requires the AG to make available on its website a searchable database of each request and decision on public information law ([HB 3033 2023](#)).

- **HB 3440 (Canales/Hinojosa)** requires municipalities, counties, and various special districts - including conservation districts - to post the agenda for an open meeting on their website and in the location where the notice is posted ([HB 3440 2023](#)).
- **SB 943 (Kolkhorst/Hunter)** requires that a newspaper that publishes a notice shall, at no additional cost to a government entity, place the notice on the newspaper's website (if it has a website) in an area clearly designed for notices at no cost to the public. The bill also requires the Texas Press Association to publish notices on its website if it has a statewide repository of notices and provides details on such a repository ([SB 943 2023](#)).

Other key bills that impact the operations of government entities include:

- **HB 1845 (Metcalf/Perry)** requires TCEQ to establish a provisional certification program for a Class D water/wastewater operator for people who do not hold a high school diploma or equivalency if the operator has satisfied specific training and exams and acts under the direct supervision of a license holder ([HB 1845 2023](#)).

- **HB 3437 (Holland/Nichols)** increases the cap for change order approvals that can be delegated from a board to staff from \$50,000 to \$150,000 ([HB 3437 2023](#)).
- **HB 3507 (Holland/Nichols)** increases from \$75,000 to \$150,000, the minimum dollar amount of contracts requiring advertisement in newspapers. The bill requires competitive bidding for contracts between \$25,000 and \$150,000, up from the current \$75,000 cap ([HB 3507 2023](#)).
- **SB 29 (Birdwell/Lozano)** prohibits a governmental entity from mandating face coverings, vaccines, or business or school closures due to COVID-19 ([SB 29 2023](#)).
- **SB 1893 (Birdwell/Anderson)** requires governmental entities to adopt a policy prohibiting the installation or use of TikTok on a device owned or leased by the entity, requires the removal of TikTok, and lists exceptions to the prohibition. The bill allows the Governor to identify other social media apps that pose similar risks to the security of governmental entity information and requires the Department of Information Resources and the Department of Public Safety to develop a model policy ([SB 1893 2023](#)).

### Looking ahead

The next significant event in the water space will be the November 7th election to see if voters approve Proposition 6, which creates the Texas Water Fund. Voter approval of this measure will trigger an appropriation of \$1 billion to the Fund for distribution through loans and grants to local water and wastewater providers to improve and expand their infrastructure ([SJR 75 2023](#)).

The full Legislature has a lot of activity on its horizon. Given the Governor's promises for special sessions and the impeachment trial of the Attorney General, there may not be much of an interim before the 89th Legislature convenes in January 2025.

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## TEXAS ALLIANCE OF GROUNDWATER DISTRICTS SUMMARY OF THE 88TH LEGISLATIVE SESSION

*By Leah K. Martinsson, Executive Director*

*Texas Alliance of Groundwater Districts (TAGD) is a 501(c)3 nonprofit membership organization created in 1988 to provide a centralized means for groundwater conservation districts to engage and stay current on the quickly evolving world of groundwater science, policy, and management. TAGD currently has 92 groundwater conservation district members and 39 associate members.*

The 88th Texas Legislature adjourned sine die on May 29, 2023 after a hectic legislative session. The session saw 8,046 bills filed—the highest ever. However, just because legislators filed a lot of bills does not mean many of them actually passed. A relatively low 1,246 bills passed both chambers; of those, the Governor subsequently vetoed 76 bills. Committee leadership for the House Natural Resources Committee and Senate Water, Agriculture, and Rural Affairs Committee – most relevant to groundwater conservation districts (GCDs) and groundwater stakeholders – remained the same as last session. Representative Tracy King (D-Uvalde) remained chair of the Natural Resources Committee. On the Senate side, Senator Charles Perry (R-Lubbock) was reappointed to chair the Water, Agriculture, and Rural Affairs Committee for the fifth time.

For the first time in years, the session could fairly be described as a “water session.” Attention on water began early with House Natural Resources Chairman Rep. Tracy King forming the first-ever House Water Caucus, which attracted the participation of 73 House members committed to ensuring a secure water future for Texas. A \$33 billion surplus made the budget and spending priorities a central focus of the session. Leading up to the session, momentum had been building for a generational investment in Texas’s water infrastructure. The water community rallied together to support such an investment. Both Chairmen led on this critical issue, which ultimately resulted in the passage of SB 28/SJR 75 (Perry/T. King). This bill creates the Texas Water Fund and the Legislature appropriated \$1 billion for the fund, subject to voter approval. This umbrella fund will allow the Texas Water Development Board (TWDB) to disburse funds to other water funds and programs it administers. The bill also creates the New Water Supply Fund, which aims to fund projects (including desalination, aquifer storage and recovery, and use of produced water) that will generate 7 million acre-feet of new water supplies by 2033. ([SB 28 2023](#)).

### Groundwater bills that passed

Throughout the 88th Legislative Session, TAGD tracked legislation that could impact GCDs and groundwater management. TAGD has a Legislative Committee that follows pending legislation and determines if a bill warrants action. Participation on the Legislative Committee is open to all TAGD members. This committee will then vote on relevant bills (only GCD members may vote) and needs 75% consensus to take a position. Positions are then subject to confirmation by TAGD’s Executive Committee.

Unlike the 87th Legislative Session, this session saw a high volume of groundwater bills filed, several of which became law. TAGD identified 25 bills that either sought to make substantive changes to Chapter 36 of the Texas Water Code or otherwise implicated groundwater management and classified these as potentially actionable groundwater bills. In total, six of those bills crossed the finish line. Each of these is discussed below.

distinct sections, this nevertheless represented fewer Chapter 36-related bills than in prior legislative sessions (15 bills in the 86th, 25 in the 85th, and 23 in the 84th). There were also several other bills filed that implicated groundwater policy and GCD operations. In total, TAGD identified 10 statewide priority groundwater bills for tracking during the legislative session. Of those 10 bills, none crossed the finish line.

- **HB 1971 (Ashby/Springer)** This bill makes several changes to various provisions of Chapter 36 of the Texas Water Code:
  - In a contested case hearing on a permit application or permit amendment for which the GCD has contracted with the State Office of Administrative Hearings (SOAH), the GCD board must issue its final decision in writing no later than 180 days after receipt of SOAH’s proposal for decision. Failure to do so will result in the final SOAH proposal for decision becoming the board’s final order. This final order is then immediately appealable and not subject to a request for rehearing.
  - In a proceeding for permit application or amendment where the GCD has contracted with SOAH for a contested case hearing, the board may not continue a matter in excess of the time limits for issuing a final decision.
  - A board must consolidate all motions for rehearing in a contested case hearing. It must issue its final decision by 90 days after the original decision date.

- For a GCD board with 10 or more directors, a concurrence of the majority of directors eligible to vote is sufficient to take action on a permit application or amendment.
- A director required to file a conflict-of-interest affidavit on a matter is prohibited from voting or attending a closed meeting on that matter unless a majority of the directors are also required to file conflict-of-interest affidavits on that matter. ([HB 1971 2023](#)).

The concepts in this bill originated from a river authority that sought certain changes to Chapter 36 to bolster the finality of GCD decisions in the context of contested cases after it had gone through a lengthy contested case hearing process with one GCD. Representative Ashby spearheaded extensive stakeholder discussions during the session in which TAGD participated, resulting in a committee substitute for the filed version of HB 1971. TAGD supported the changes incorporated into the committee substitute and ultimately is the version that became law.

- **HB 2443 (Harris/Perry)** This bill adds a new Section 36.1025 to the Texas Water Code, which allows a person with a real property interest in groundwater to petition their GCD to adopt or modify a district rule. It includes notice and hearing requirements and requires a GCD to issue an explanation for the reasoning if a rulemaking petition is not granted. GCDs must adopt rules governing the form and procedure for such petitions by December 1, 2023. ([HB 2443 2023](#)). TAGD previously prepared a template that districts may use to include such a petition process in their rules. This TAGD-supported bill was a refile from the last two sessions.
- **HB 3059 (T. King/Perry)** This bill makes the following changes to Sections 36.122 and 36.207 of the Texas Water Code:
  - Increases the export fee cap for both tax- and fee-based districts to 20 cents per thousand gallons of water exported;
  - Beginning January 1, 2024, allows for a 3% annual increase to the maximum allowable export fee rate that a district may impose;
  - Provides that increases to export fees are not valid unless there is a public hearing prior to GCD board approval;
  - Allows for a district governed by a special law with provisions regarding export fees to continue to charge fees in accordance with that special law;
  - Restricts a district's use of export fees collected from the authorized 3% annual increase only to costs related to assessing and addressing impacts associated with groundwater development; and

- Clarifies that a district may use funds obtained from fees to maintain the operability of wells significantly affected by groundwater development to allow for the highest practicable level of groundwater production while achieving the desired future conditions. ([HB 3059 2023](#)).

Over the interim, both the House Natural Resources Committee and the Senate Water, Agriculture, and Rural Affairs Committees held hearings focused on the impacts of large-scale groundwater production and export projects. There was broad acknowledgement that current district funding levels are often insufficient to support the science and monitoring needed to assess impacts or to implement potential programs to address local impacts from those export projects. The export fee caps and structure had remained unchanged since their adoption in 2001. This set the stage for the passage of HB 3059, which TAGD supported.

- **HB 3278 (Price/Blanco)** This bill makes changes to Section 36.108 and the steps required for final adoption of desired future conditions (DFCs) by a groundwater management area (GMA). Specifically, if a GCD receives supporting materials (including new or revised model run results) during the district's public comment period on draft DFCs, then that GCD is required to provide those materials to the other GCD representatives in the GMA and to post those materials on a publicly available website for 30 days. After these 30 days, the GMA may reconvene for a joint planning meeting at which it shall take additional public comment and may adopt a final DFC. The bill further requires that the explanatory report include the reasons for including or excluding comments provided during the public comment period or GMA meeting. ([HB 3278 2023](#))
- **SB 1746 (Perry/Bell)** This bill creates a new exemption in Section 36.117(b)(4) of the Texas Water Code to cover the use of a water well as a temporary water supply for drilling a permitted groundwater production well. It provides that this exemption may not exceed 180 days unless a district grants an extension not to exceed the time it takes to complete the groundwater production well. It also clarifies that a district may cancel this exemption if the temporary well is no longer used solely for the exempted purpose. ([SB 1746 2023](#))
- **SB 2440 (Perry/Burrows)** This bill modifies the Local Government Code to mandate that cities and counties require groundwater availability certifications as a part of plat applications. Previously, Local Government Code Sections 212.0101 and 232.0032 allowed (but did not require) cities and counties, respectively, to require a person filing a plat application to certify adequate groundwater availability for that subdivision. The bill allows a city

or county to issue a waiver from this new groundwater availability certification requirement if the municipality or county determines, based on credible evidence, that there is sufficient groundwater available and will continue to be available and either: (1) the entire tract will be supplied with water from the Gulf Coast Aquifer or the Carrizo Wilcox aquifer, or (2) the proposed subdivision will divide the tract into not more than 10 lots. The requirements of this bill apply to plat applications filed on or after the bill's effective date of January 1, 2024. ([SB 2440 2023](#)). The Texas Commission on Environmental Quality (TCEQ) is responsible for establishing the form and content of groundwater availability certifications and will undergo a rulemaking to implement the bill. This bill arose in the context of continued rapid growth in Texas as many developers identify groundwater as the source of water to supply planned homes. In some cases, however, those homes are constructed and sold and groundwater availability is subsequently inadequate to serve those homes. TAGD supported this bill.

While not directly affecting Chapter 36 of the Texas Water Code, there are a few other bills relevant to groundwater:

- **HB 2759 (Thompson/Perry)** The bill provides specific statutory authority for the TWDB as the lead agency to coordinate the TexMesonet through station ownership and partnerships and codifies associated duties. ([HB 2759 2023](#)). The TexMesonet is a hydrometeorological network that provides statewide data on hydrological and meteorological conditions collected from earth observation stations. Many GCDs partner with TWDB to locate and maintain TexMesonet stations. TAGD supported this bill.
- **SB 1047 (Perry/Tepper)** This bill directs the Texas Produced Water Consortium (created in 2021 through SB 601) to select and implement a pilot project on the beneficial use of produced water and submit a report to the Legislature on that project. ([SB 1047 2023](#)). The Legislature appropriated \$5 million to fund this effort. TAGD supported this bill.
- **HB 4256 (Murr/Blanco)** This bill establishes a fund and associated grant program for plugging certain wells that will be administered by TCEQ. The bill requires RRC to establish and maintain a list of approved well pluggers that may plug wells through the grant program. The bill defines various program requirements and narrowly defines eligibility in a manner that effectively limits the program to Pecos County in far West Texas. Several particularly problematic deteriorated and abandoned wells are bringing contaminated water, hydrogen sulfide, and radioactive materials to the surface in Pecos County. ([HB 4256 2023](#)). The Legislature allocated \$10 million to this fund. Because TAGD does not take positions on local bills, it did not

have an official position on this bill. However, the organization broadly supports addressing orphaned, abandoned, and deteriorated wells.

### Select groundwater bills that did not pass

Because groundwater bills that are not successful in one session have a habit of returning in future sessions, it is worth briefly mentioning a few other key groundwater bills that did not pass during the 88th legislative session. These included:

- **SB 156 (Perry)** This omnibus groundwater bill was a refile from the 87th session. The bill included four distinct parts. First, it would have changed the mandatory award of attorney's fees to GCDs when a district prevails under Section 36.066(g) of the Texas Water Code to be discretionary. Second, it would have clarified which DFC should be used in a GCD's management plan if a petition is filed that the adopted DFC is unreasonable under the provisions of Chapter 36. Third, it included the same petition for rulemaking process contained in the successful HB 2443 (Harris), discussed above. Finally, SB 156 would have added a new section to Chapter 36 to require an applicant for a well permit application or amendment to provide notice to each person with a real property interest in groundwater beneath the land within the space prescribed by the district's spacing rules for the proposed or existing well, with certain exceptions. ([SB 156 2023](#)). TAGD supported three of the four components of SB 156—all except the proposed change to the attorney's fees provision. Bills to modify the attorney's fees provisions of Chapter 36 have been filed in several prior legislative sessions and have consistently reflected a point of disagreement among stakeholders. SB 156 passed the Senate with the attorney's fees provision intact. As the end of the session neared, the House Natural Resources Committee approved a committee substitute to SB 156 that removed the attorney's fees change and added the provisions contained in several other Chapter 36 bills that passed the House but did not receive a committee hearing in the Senate. Those added to CSSB 156 included HB 4444, HB 4532, HB 5052, and HB 5302 (all discussed below), as well as HB 3059 (which did pass, discussed above). ([CSSB 156 2023](#)). While CSSB 156 was placed on the House calendar, the clock ran out before it could receive a vote by the full House.
- **HB 4532 (Kacal)** This bill would have required TWDB to calculate the modeled sustained groundwater pumping of the state's aquifers in order to provide context for the calculated total estimated recoverable storage number that is required to be considered by GCDs in the DFC adoption process. ([HB 4532 2023](#)). This bill was a refile from earlier legislative sessions, and, like prior sessions, TAGD

supported this bill. The House approved this bill, but did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.

- **HB 5052 (Gerdes)** This bill would have added registered exempt wells to the list of factors that a GCD considers in reviewing a permit application. ([HB 5052 2023](#)). Similar versions of this TAGD-supported bill have been filed in prior legislative sessions. While the House approved this bill, it did not receive a hearing in the Senate Water, Agriculture, and Rural Affairs Committee.
- **HB 2735 (T. King)** This bill sought to add a bonding requirement for petitioners other than the applicant in a contested case hearing to cover both the GCD's and the applicant's attorney's fees. ([HB 2735 2023](#)). TAGD took no position on this bill. This bill was voted favorably by the House Natural Resources Committee but did not receive a vote by the House.
- **HB 4444 (T. King)** This bill sought to make certain changes to the definitions section of Chapter 36. These included: updating the antiquated definition of "waste;" clarifying that "use for a beneficial purpose" must not be wasteful; and adding a definition of "conservation." It would have also cleaned up some obsolete provisions regarding wells contained in Chapter 11 of the Texas Water Code. ([HB 4444 2023](#)). TAGD supported the engrossed version of this bill. This bill was approved by the House but did not receive a hearing in the Senate Water, Agriculture and Rural Affairs Committee.
- **HB 5302 (Kacal)** This bill sought to improve certain aspects of the petition for inquiry review process, which is a GCD oversight mechanism contained in Section 36.3011 of the Texas Water Code. Changes would have included: clarifying TCEQ's responsibility for compliance with any open government requirements associated with a review panel; providing that the Office of Public Interest Counsel shall provide legal support to the review panel; establishing a process for both the review panel and TCEQ to obtain technical support from TWDB; and providing for compensation of actual expenses of review panel members. ([HB 5302 2023](#)). The basis for these clarifications arose from TCEQ's and the review panel's experience in 2019, the first time a petition for inquiry was granted and a review panel appointed. TAGD supported this bill. This bill was approved by the House but did not receive a hearing in the Senate Water, Agriculture and Rural Affairs Committee.

Finally, after allocating \$1 billion to water infrastructure and new water supply, smaller budgetary requests related to groundwater were less successful. TWDB had sought funding for several exceptional items to bolster its groundwater monitoring, TexMesonet, and Texas water data programs. They also

sought to replenish the Agricultural Water Conservation Fund (which will run out of funding at the end of the next biennium) for an additional ten years. A number of GCDs and other entities have utilized this effective program over the years, generating significant water savings by Texas irrigators. By and large, however, these items were not funded – or were funded at a small portion of the requested amounts – in the adopted budget.

### Government bills that passed

There were several bills affecting government operations that became law and are relevant to GCDs:

- **HB 3440 (Canales/Hinojosa)** This bill requires that certain governmental entities, including GCDs, post the agenda for an open meeting on the government website and also post the agenda in the same location where the meeting notice is posted. ([HB 3440 2023](#)).
- **SB 232 (Hinojosa/Geren)** This bill provides for the automatic removal of any person holding elected or appointed office with a political subdivision if that person commits certain enumerated criminal offenses. ([SB 232 2023](#)).
- **SB 271 (Johnson/Shaheen)** This bill requires a local government (including GCDs) that holds computerized data with sensitive personal information to report a security incident. A "security incident" is defined to include a breach or suspected breach of system security and the introduction of ransomware. ([SB 271 2023](#)).
- **SB 1893 (Birdwell/Anderson)** This bill prohibits the installation or use of certain social media, including TikTok, on any device owned or leased by a governmental entity and requires a governmental entity to adopt a model policy to implement the prohibition. The Department of Information Resources and Department of Public Safety is required to develop the model policy. ([SB 1893 2023](#)).
- **HB 3033 (Landgraf/Zaffirini)** This bill makes various changes to the public information law. Key provisions include:
  - defining a "business day" as any day other than a Saturday or Sunday, national holiday, state holiday, or days specifically designated by the government body;
  - clarifying the exceptions to disclosure requirements as they relate to election information;
  - imposing certain limitations on repeat requestors and allowing for photo identification requirements;
  - requiring prompt release of basic responsive information, even if the government body is seeking an Attorney General decision on whether other information is subject to the request;
  - adding requirements to notify a requestor of the status of a request; and

- o authorizing the Attorney General to require training of a public official of a government body if the government body fails to comply with a requirement of the public information law. ([HB 3033 2023](#)).

### A look ahead

The interim looks like it will be an interesting one around the Capitol. At the time of this writing, Governor Abbott has already called two special sessions to address property tax relief. In addition, the Senate is poised to hold the impeachment trial of Attorney General Ken Paxton in September.

With respect to water, in November we will see the SJR 75 on the ballot. Voter approval of this measure is necessary to create the new Texas Water Fund and trigger the associated \$1 billion appropriation to that fund. And sometime in the late fall or early winter, Speaker of the House Dade Phelan and Lieutenant Governor Dan Patrick will issue their interim charges. Those charges often drive policy discussions over the interim and set the tone for the upcoming session.

To further TAGD's mission to promote and support sound groundwater management based on local conditions and good science, TAGD will continue to engage in groundwater-related interim charges and associated policy discussions. TAGD will also assist its members in adjusting management and operations in accordance with legislation enacted during the 88th Legislative Session.

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## A CRUCIAL AND HISTORIC DROP IN THE BUCKET

*By Sarah Rountree Schlessinger, Texas Water Foundation, Chief Executive Officer*

*Texas Water Foundation (TWF) is a nonpartisan 501(c)(3) nonprofit that equips decision makers with tools to lead Texas into a sustainable water future.*

From a national perspective, Texas' water policy has always carried the designation of being unique. In many cases, Texas has confronted water policy challenges ahead of national trends and invested significant funds to create sophisticated water planning and funding mechanisms. Texas water policy has also tended to be largely reactive, spurred by a history of disastrous droughts or catastrophic floods. This year, Texas' water agenda took a markedly more proactive tone and tracked unusually parallel to national ones.

The momentum around water infrastructure during this legislative session was predictable. Water infrastructure nationwide was funded mainly by a wave of federal investments fifty years ago. Much of that is aging beyond its useful lifespan and deteriorating faster than local utilities can maintain, replace, or expand. The passage of the Bipartisan Infrastructure Investment and Jobs Act at the end of 2021 signaled a significant course correction for decades of missing federal investment in critical infrastructure. It offered an opportunity for individual states to draw down funding for water.

Over the past two years, evidence of that aging infrastructure was present in Texas. Between statewide water system failures during Winter Storm Uri, the emergence of water loss data amidst staggering water supply projections, and a year of more boil water notices than any other state, it was inevitable that the state of Texas' water infrastructure would come into stark focus.

Water infrastructure, however, is much more technical and nuanced than previous water policy agendas. It has as much to do with built infrastructure nature-based infrastructure, complex funding mechanisms, technical assistance, workforce, and considerations of affordability and access. Compounding that complexity, Texas' existing and successful water infrastructure funding mechanisms, such as the State Water Infrastructure Fund for Texas (SWIFT), were reportedly oversubscribed or struggling to meet growing demands. Again, Texas' headline water agenda tracked with national debates on building, funding, and maintaining critical infrastructure.

In addition to the focus on water infrastructure, there were three other factors that we knew would influence how water would fare during the 88th Texas Legislature:

The first was, unsurprisingly, the weather. Texas continues to endure prolonged and devastating droughts, heat waves, water shortages, and more frequent and significant freeze events. As a result, Texans and our legislators have become increasingly

aware of the inextricable link between power, food, and water. While the need for resilience drove policy discussions focused on energy production, it also spilled over appropriately to water.

The second factor was that all three key state agencies impacting water planning, financing, and regulation were undergoing sunset review. Sunset, the process by which a state agency is reviewed to determine whether it is meeting its statutory obligations, offered opportunities for the Texas Water Development Board (TWDB), the Texas Commission on Environmental Quality (TCEQ), and the Public Utility Commission (PUC) to be carefully assessed and produce legislation that would serve as vehicles for Texas water policy to make significant strides.

The third and arguably more significant factor was that the Texas Comptroller ended 2022 with the forecast that Texas would enter the 88th Legislative Session with a historic budget surplus of \$32.7 billion. Incidentally, Texas Comptroller Glenn Hegar completed his Good for Texas tour shortly before that announcement, which included a timely focus on water as a cornerstone of our Texas economy. Weeks before the end of the interim, the budget surplus signaled a significant opportunity for water to be meaningfully addressed. It also, however, turned up the competition against countless other statewide priorities for water to retain the attention of our legislators.

Getting legislators' attention to the critical state of Texas water appeared not to be the challenge. In a historic move, Representative Tracy O. King formed the first Texas House Water Caucus, a bipartisan effort to provide educational resources, develop a new generation of water champions, and support the prioritization of water. The Texas House Water Caucus was established in February 2023 with a starting roster of 38 legislators. Within one month, that roster grew 92% to include 73 members from the Texas House of Representatives, making it the largest bipartisan caucus in the Texas Legislature. Either by the visible water challenges each legislator's district faced or the refreshingly nonpartisan nature of water, the caucus' rapid popularity signaled water had their attention.

However, keeping their attention and ensuring that water was prioritized required an unusual but successful streamlining of water agendas, terminology, and priorities. That focus was very clearly on water infrastructure and supply. Between January 1 and May 22, "water infrastructure" was mentioned 759 times in media outlets and 875 times on Twitter. "Water Supply" was mentioned 1,386 times in media outlets, and "underserved communities" was mentioned in the context of water 664 times. As a result of that coverage or the issues themselves, it was unsurprising that member engagement, or total authors,

co-authors, and sponsors on water bills, grew 63% during the 88th Legislative Session compared to previous sessions.

As with all past significant water sessions, it took dedicated water champions to prioritize water. Senator Charles Perry, author of the 88th session's headline water bill SB 28 and its companion SJR 75, led the charge on addressing Texas' water supply and infrastructure challenges. Following considerable efforts by legislators, advocates, and agency staff, SB 28 was passed almost unanimously in both the House and Senate to create a new constitutionally protected fund for water. The Governor signed SB 28 and SJR 75 with a \$1 billion appropriation and a constitutional amendment to be approved by Texas voters on the November ballot.

While SB 28's \$1 billion was not the only funding allocated for water during the 88th Legislative Session, it was the most significant and was received with mixed emotions. On the one hand, it resonated with some as a deflated win, a drop in the bucket relative to Texas' staggering water infrastructure funding needs and available surplus budget. On the other hand, it represents a crucial triumph in a legislative session where state priorities could have easily eliminated the opportunity. In addition to SB 28 representing the most significant investment Texas has made in water since 2013, it is significant in its proactive acknowledgment of the technical and complex state of Texas water infrastructure. Most importantly, it creates the infrastructure, pun intended, for future investments.

The 88th Legislative Session made some other essential investments in water. Texas approved \$125 million in match

funds to draw down on the \$750 million federal Infrastructure Investment and Jobs Act funding. It also dedicated \$625 million for flood mitigation projects, \$550 million to match federal funding for coastal projects and \$1.5 million towards Texas water data.

Between sunset bills, local bills, and the usual array of groundwater, planning, and regulatory reform, the 88th Texas Legislature saw almost 200 water-related bills filed. Of those, 29 were enacted. Meaningful regulatory reform was advanced for water utilities and Groundwater Conservation Districts, and considerations of mitigation funding, climate change, and the importance of water data even made headway.

Beyond the success of water infrastructure funding, there was another less obvious triumph for water during the 88th Legislature. It came in the form of tireless coordination and the development of deeper trust amongst Texas' water associations, nonprofits, and advocates. Whereas past sessions may have been marked by each industry segment advocating in their lane, there was an evident recognition that the prioritization of water would require a Texas-sized effort. For that, Texas water champions should be commended.

The success of this coordination may continue to provide Texas with benefits beyond the 88th Legislative Session. As record temperatures and increasing water demands put unprecedented strain on our infrastructure, workforce, reservoirs, rivers, and aquifers, working together will be paramount to advancing water security for Texas.

## DEFINITELY A “WATER SESSION” — BUT FOR WHOM? AND WHAT’S AROUND THE RIVERBEND?

By Alex R. Ortiz, Water Resources Specialist, Sierra Club Lone Star Chapter

*The Lone Star Chapter of the [Sierra Club](#) is the state-level arm of the national grassroots environmental organization. Organized in 1965, the Lone Star Chapter represents over 29,000 Texans committed to the protection and enjoyment of the state's natural resources. The Lone Star Chapter has been actively lobbying the Texas Legislature on water and other issues for over 50 years.*

The 88th Regular Texas Legislative Session has come and gone; and it has already been hailed as a “water session” with the passage of [Senate Bill 28](#) and [Senate Joint Resolution 75](#). SB 28 creates the Texas Water Fund and New Water Supply for Texas Fund while SJR 75 authorizes an appropriation of \$1 billion to the Texas Water Fund pending a constitutional amendment and reserves \$250 million for the New Water Supply Fund. This level of investment in Texas’s water future through infrastructure is big, bold, and needed. What remains unclear is the future of these mechanisms. The Texas Water Development Board (TWDB) will likely need to undergo rulemaking in order to interpret terms like “new water supplies” and “new water sources.”<sup>1</sup>

Of course, more happened in the legislature than just the creation of these two new bold funds, including the continuation of the two agencies with primary authority over Texas’s water resources and infrastructure: the Texas Commission on Environmental Quality (TCEQ) and the Texas Water Development Board (TWDB). Moreover, this is all to speak aside from the abundance of beneficial (and harmful) water legislation that did not make it to the Governor’s desk.

### Taking a look at SB 28 and SJR 75 with a focus on equity and community needs across the state

There was broad support for SB 28 and SJR 75 across the water community. For transparency: the Lone Star Chapter remained neutral on the bill. The intended result and priorities of SB 28 are quite clear: bolster water infrastructure across Texas, with a particular focus on communities that are either a “rural political subdivision” or “municipalities with a population of less than 150,000.”<sup>2</sup> Unfortunately — this methodology perpetuates a clear issue of environmental justice

<sup>1</sup> Senate Bill 28, enrolled text. Sec. 15.453 USE OF FUND.

<sup>2</sup> Senate Bill 28, enrolled text. “Rural Political Subdivision” is defined in [Texas Water Code](#) §15.992(4) as “(A) a nonprofit water supply or sewer service corporation, district, or municipality with a service area of 10,000 or less in population or that otherwise qualifies for financing from a federal agency; or (B) a county in which no urban area exceeds 50,000 in population.”

by minimizing the needs of areas in the state that have faced historic disinvestment, predominantly in communities of color. For example, the most recent census data for Brownsville shows a population of 186,738 as of 2020, with Cameron County’s whole population of 421,017, which means that the surrounding communities are highly unlikely to be able to take advantage of the prioritization scheme drawn out in the Texas Water Fund. Similarly, we see Corpus Christi’s population of 317,863, with Nueces County’s total population of 353,178. Corpus Christi as a community will imminently face water supply issues due to increased petrochemical development and yet is unlikely to benefit from specific prioritization outside of (perhaps) the New Water Supply Fund.<sup>3</sup>

An amendment on the House floor by Representative Ana-Maria Ramos would have extended the prioritization scheme to include “economically distressed areas” as priority areas.<sup>4</sup> While it was easily amended onto the House version of SB 28, largely due to it being acceptable to House sponsor Chairman Tracy King, the amendment did not survive the conference committee.

### SB 28 begins the path of addressing water loss and water conservation

Two of the intended Texas Water Fund recipients include: the statewide water public awareness program (which previously focused on water conservation exclusively, but has been expanded to encompass water issues comprehensively) as well as projects that mitigate water loss. Water loss mitigation has been shown by our partners at the Texas Living Waters Project to be a genuine concern resulting in the loss of 572,000 acre-feet of water annually.<sup>5</sup> Both water loss and water conservation strategies are integral to meeting the needs of our ever-growing state. Additionally, water loss mitigation and water conservation strategies could potentially be eligible for funding from the New Water Supply for Texas Fund depending on the results of rulemaking at TWDB interpreting terms related to that fund.

<sup>3</sup> See The Corpus Christi Water Wars, *Rolling Stone*, Reed Dunlea, May 3, 2021 (<https://www.rollingstone.com/politics/politics-features/corpus-christi-exxon-sabic-water-supply-problem-1163453/>).

<sup>4</sup> Texas House of Representatives Journal, 88th Legislature, 64th Day, p. 4361. Amendment No. 3 by Representative Ramos (<http://journals.house.texas.gov/hjrn/88r/pdf/88RDAY64FINAL.PDF#page=33>).

<sup>5</sup> Hidden Reservoirs: Addressing Water Loss in Texas, Texas Living Waters Project (<https://texaslivingwaters.org/deeper-dive/water-loss/#:~:text=Texas%20water%20systems%20lose%20at,It's%20a%20lot%20of%20water>).

## “New” water supplies gain traction as an answer to water supply concerns

SB 28 also creates the New Water Supply for Texas Fund which is dedicated to addressing Texas’s water supply needs by financing of projects “that will lead to seven million acre-feet of new water supplies by December 31, 2023.” The bill describes projects intended to be funded, including desalination projects, produced water treatment projects (other than projects only for oil and gas exploration), aquifer storage and recovery projects, and infrastructure to transport water from a new source. Crucial environmental and human health concerns remain unaddressed in these sources, especially for the use of produced water and desalination.

1. Produced water continues to be discussed as an opportunity despite lack of meaningful progress on standards and risk assessment.

Produced water has become a more frequent topic of conversation since the 87th regular session and the creation of the Texas Produced Water Consortium (TXPWC). This session, [SB 1047](#) provided some next steps for the TXPWC, including the development of pilot projects which must be selected by October 1, 2023, as well as requiring the consortium to produce another report to the legislature by October 1, 2024, describing the status of pilot projects and suggested policy changes.

The TXPWC provided a preliminary report to the legislature in 2022, which included recommendations to establish a fund for pilot project testing, among others. What continues to go underexamined is the need for risk assessment and the development of novel standards before the widespread use of produced water as a supplemental water source. Texas has no standards for treatment and discharge or reuse as a potable water supply developed specifically with produced water in mind. Because these have never been developed, treating produced water to protect existing surface water quality standards (SWQS) or drinking water standards would wholly miss the point of risk assessment, which is to establish what would sufficiently protect human health and the environment.

2. Desalination as a new water supply faces regulatory uncertainty and TCEQ must address coastal resilience rapidly.

For more than a decade, the legislature and private entities have continued to analyze and pursue the feasibility of marine desalination to supplement our water supplies. With the Gulf of Mexico being the largest body of water available to the state, it would be sensible to imagine this source as being optimal and high priority. However, despite the state’s desires, marine desalination projects still face substantial pushback at the local level. The primary concern for communities is the disposal of the highly concentrated saline brine.

Texas bay and estuarine systems are a hub for biodiversity due to their delicately balanced salinity, making them invaluable economic resources as they support major tourist and recreational fishing economies along our coast. However, despite this, there has been little movement on regulatory protections of coastal salinity gradients. In fact, in the entire time that TCEQ has had regulatory authority over Clean Water Act NPDES permitting, there has been no attempt to bolster protections for these sensitive ecosystems through surface water quality standards. Instead, the protections for these areas rely on vague narrative criteria such as “Salinity gradients in estuaries must be maintained to support attainable estuarine-dependent aquatic life uses.”<sup>6</sup> Two decades worth of data is more than enough to establish more comprehensive standards, especially in light of increasing pressures on coastal environments due to climate change-induced sea level rise, additional coastal development, decreased freshwater inflows, and more frequent drought and flooding.

Our neighboring state of Louisiana describes salinity standards for waters of varying salinity

content by describing the presence of specific salinity-dependent species. These standards maintain of a narrative rather than numeric criteria but tie salinity content to affected species. Degraded salinity gradients are a present concern in Texas, as evidenced by changes in saline-sensitive aquatic life. This degradation affects wildlife and risks increased coastal land loss attributed to the feedback loop of saltwater intrusion. The vague narrative criteria create significant regulatory uncertainty at TCEQ, making permitting these projects more difficult and risking increased likelihood of contested case hearings and lawsuits.

Finally, the eligibility for desalination projects under the New Water Supply Fund may hinge on how the TWDB defines terms like “new source” and “new water supply.” If these terms exclude projects currently within the state water plan or regional water plans, then certain areas of the state would be categorically excluded from funding some projects. If the projects exist in the state or regional water plans, then funds from the State Water Implementation Fund for Texas (SWIFT) would be the more appropriate vehicle for those projects.

## Additional major legislative shortfalls on water equity: HB 3522, HB 3523, and SB 1823

As noted in the discussion about SB 28, there was lack of priority for economically distressed areas. These areas are predominantly communities of color that have faced historic disin-

<sup>6</sup> [TAC §307.4\(g\)\(3\)](#). The provision continues: “Numerical salinity criteria for Texas estuaries have not been established because of the high natural variability of salinity in estuarine systems and because long-term studies by state agencies to assess estuarine salinities are still ongoing.” This provision has been in effect for over two decades, since the 1997 SWQS.

vestment and, unfortunately, appear to continue doing so. [HB 3522](#) and [HB 3523](#) (M. Gonzalez) directly dealt with increasing access to the Economically Distressed Areas Program (EDAP) by expanding the amount available to be spent in grants from 70% to 90% of funds (HB 3522) as well as expanding the ability of TWDB to spend \$100 million in EDAP funding (up from the present \$25 million) in one fiscal year (HB 3523). Both bills passed the House with overwhelmingly bipartisan support but failed to get a hearing in the Senate Committee on Water, Agriculture, and Rural Affairs.

Relatedly, Senator Nathan Johnson filed [SB 1823](#), which would have broadened the scope of EDAP-eligible projects to include drainage. Many EDAP-eligible communities suffer from the impacts of flooding due to inadequate drainage, and this bill would have included these projects as eligible in addition to water and wastewater projects. Unfortunately, the bill was not heard in Senate Water, Agriculture, and Rural Affairs, and without a House companion, went nowhere.

The story told by these three bills and the Ramos amendment to SB 28 is quite clear. Senator Charles Perry brought none of these three bills for hearing despite the good they would do. He moved SB 28 into a conference committee to “remove EDAP,” despite the program never directly benefitting from the bill. While expanding our water supply is a priority, and access to water is a large concern in rural parts of the state, marginalized communities will continue to suffer disinvestment — or at the very least, lack of prioritization in such investment.

### **Both TCEQ and TWDB Sunset Reviews make needed changes at the agencies**

The review of both TCEQ and TWDB resulted in the continuation of the agencies with essential reforms. HB 1565 (Canales) codified in statute good guidance from TWDB to the regional water planning groups, permitting the regional groups to plan for a drought worse than the drought of record. With drought expected to become more frequent and prolonged due to climate change, this is an important step in recognizing that state water planning must be climate resilient.

SB 1397 (Schwertner) provided for additional permit notice requirements. Permitting notice and transparency were critical issues identified by the Sunset Advisory Commission; additional community outreach and required electronic posting of permit applications are major steps forward in resolving public distrust of the agency. Moreover, there was a renewed commitment by the legislature to address the needed review of environmental flow standards. Unfortunately, there was a missed opportunity to correct a major environmental misstep from a floor amendment to TCEQ’s previous sunset legislation (HB 2694, 82nd Texas Legislature). The floor amendment prohibited any state agency, notably affecting Texas Parks and Wildlife

Department (TPWD), from contesting a TCEQ permit. Legislation to correct this issue was filed as a standalone bill in the 87th Texas Legislature (HB 2716 by T. King) as well as during this session (SB 2293 by Zaffirini) to attempt to return this authority. Unfortunately, SB 2293 was not heard in committee, resulting in TPWD and other agencies being barred from contested case hearings.

### **Pre-Production Plastics Continue to Linger in Texas Waters**

HB 4144 (Zwiener) would have empowered TCEQ to analyze pre-production plastic pollution (including nurdles) through its existing authority under the federal Clean Water Act. While the legislation may not have been necessary for TCEQ to do so, the agency claimed to be unsure about its statutory authority during its most recent triennial review of the surface water quality standards, likely caving to industry pressure. Rather than quibble over details, the bill would have simply instructed TCEQ to consider pre-production plastic pollution and its potential harms in monitoring, assessing, and developing surface water quality standards.

There is significant scientific evidence to show that nurdles wreak environmental havoc on habitats and wildlife and have the potential to cause harm up the food chain through bio-accumulation and biomagnification, including to humans. The sole registered opposition to the bill came from the Texas Chemical Council, which also sought to remove the first-ever attempt to prohibit nurdle pollution during the last review of the standards.<sup>7</sup> Unfortunately, the bill did not make it out of the House Committee on Environmental Regulations.

### **Conclusion**

Our retrospective on this session reminds us that there is still a long path downstream. There is little doubt that with the passage of SB 28 and SJR 75, the 88th Texas Legislature will be remembered as a “water session,” with meaningful investment in water. However, despite these far-reaching additions to state-wide water funding, there is substantial work left to be done by the State to implement these new mechanisms and ensure they are implemented in a way that supports all Texans. It is also abundantly clear that there is a substantial disconnect between our state’s emphasis on water quality and our state’s focus on water quantity. In order for water to continue to support our great state and all its life, it must be both abundant and clean.

<sup>7</sup> TCEQ Agenda Item Request with response to comments regarding Rulemaking Adoption of TAC Chapter 307, Texas Surface Water Quality Standards, Rule Project No. 2020-014-307-OW (<https://www.tceq.texas.gov/downloads/agency/decisions/agendas/backup/2021/2021-0310-rul-ado.pdf>)

## TEXAS WATER INFRASTRUCTURE SUMMARY OF WATER-RELATED LEGISLATION IN THE 88TH LEGISLATIVE SESSION

*By Perry L. Fowler, Executive Director, Texas Water Infrastructure Network*

*[Texas Water Infrastructure Network](#) (TXWIN) is a 501 C6 non-profit association founded in 2013 by a group of like-minded Texas construction companies who agreed that there was a need to create a statewide organization specifically focused on construction-related legislative and regulatory issues in the Texas water infrastructure construction market. TXWIN members are building the infrastructure that keeps the Texas economy moving while securing our water future.*

The TXWIN membership includes the most respected and capable construction companies in the water sector in Texas. TXWIN members specialize in the construction of water treatment plants, pipelines, flood control, and other projects for municipal and regional water utilities, industrial and commercial clients. TXWIN strives to partner with other key industry groups, engaging in advocacy on funding, procurement regulatory, and other market related issues behalf our membership with the Texas State Legislature, local, state and federal government entities. TXWIN members have put billions of dollars of construction projects in place in Texas and across the nation. On behalf of our membership, we appreciate the opportunity to share the construction industry's viewpoint on key developments in the 88th Regular Session, and the opportunity participate in the *Texas Water Journal's* legislative report for the fifth consecutive time since 2015.

### 88th regular session background

Leading up to the 88th Regular Session, drought, high-profile water infrastructure failures, pandemic-related project challenges related to supply, and inflation were top issues facing the Texas water and water infrastructure construction industry. Many of the key issues and trends driving the needs for water infrastructure investment were identified in the 2022 Texas Water Capital Needs Survey conducted by TXWIN with the assistance of the water stakeholder community and Water Opinions, LLC.<sup>1</sup>

Similarly, interim Committee Reports from House and Senate Committees of jurisdiction provided insights into what would manifest into legislative proposals, including the need for additional state funding for water infrastructure funding.<sup>2</sup>

<sup>1</sup> Texas Water Capital Needs Survey, <https://www.txwin.org/texas-water-needs-survey-2022>,

<sup>2</sup> Texas Senate Committee on Water, Agriculture & Rural Affairs Interim Report to the 88th Legislature, [https://senate.texas.gov/cmtes/87/c700/c700\\_InterimReport\\_2022.pdf](https://senate.texas.gov/cmtes/87/c700/c700_InterimReport_2022.pdf).

Other water relate legislative issues were identified and included Sunset legislation to address key policy areas and operational issues identified by Sunset Advisory Commission staff, legislators and stakeholders which could ultimately end up in reauthorization legislation for the Texas Water Development Board and the Texas Commission on Environmental Quality.<sup>3</sup>

The 2023 88th Regular Session of the Texas Legislature also began with speculation about the use of a significant budget surplus estimated by the Comptroller and major policy issues competing for the attention of lawmakers. Infrastructure was among top the priorities identified by the Governor, Lieutenant Governor, and Speaker of the House, which prominently included addressing water issues, securing the electric grid, property taxes, provision, and proliferation of broadband to connect Texas. A new bipartisan Water Caucus was also formed which would eventually be comprised of 70 members of the Texas House.<sup>4</sup>

All these factors combined to set the stage for an unprecedented focus on water and related policies especially as they related to the further development and enhancement of state resources to fund and administer programs related to water policy to ensure the health and safety of the Texas public and the Texas economy. The most significant developments in Texas water this Session was the passage of new programs and funding to enhance the capacity of the Texas Water Development Board (SB 28 & SJR 75) to provide additional significant funding for water, wastewater, and flood control infrastructure.

While TXWIN and others advocated for more significant funding, the progress achieved, the increased coordination of advocacy efforts by water interests, and the momentum generally around Texas water issues cannot be understated. The 88th Session was foundational in many ways, with unprecedented support and focus on water. TXWIN was honored to play a role in the creation of a broad-based coalition comprised of over 60 organizations, including 20 statewide membership-based trade associations and non-governmental organizations representing the water, construction, engineering, agriculture, business, municipal government, the energy sector, and numerous other

<sup>3</sup> Texas Water Development Board Sunset Report, <https://www.sunset.texas.gov/reviews-and-reports/agencies/texas-water-development-board>; Texas Commission on Environmental Quality Sunset Report, <https://www.sunset.texas.gov/reviews-and-reports/agencies/texas-commission-environmental-quality>.

<sup>4</sup> The Texas Tribune, A new bipartisan group of Texas lawmakers wants to highlight the state's fragile water infrastructure, <https://www.texastribune.org/2023/01/13/texas-legislature-water-infrastructure-boil-water-notices/>.

partners to support funding for water infrastructure, flood control projects. We are particularly grateful for the efforts of our coalition partners, the leadership of Chairmen Charles Perry and Chairman Tracy King, House and Senate Leadership, and the support of all the members of the Texas Legislature and legislative staff for their active engagement on water issues and strong support water funding this Session.

The following legislation represents the most significant developments related to water infrastructure policy in the contracting, procurement, liability, and general government administration areas with the potential to impact Texas water projects, construction and related legal issues.

## FUNDING

### **SB 28: Relating to financial assistance provided and programs administered by the Texas Water Development Board**

This legislation creates new Water Supply for Texas Fund, which allows money transfers from any source to create an additional seven million acre-feet of water supplies by 2033. Provides financial assistance to political subdivisions to create new water supplies, including desalination (i.e., seawater or brackish), produced water (not applicable for oil and gas exploration), aquifer storage and recovery projects (ASR), and development of infrastructure to transport water. The legislation also allows transfers of WSTF to SWIFT and other specific TWDB funding programs at the Board's discretion.

It is noteworthy to mention that TXWIN strongly advocated for provisions allowing the use of the new water supply fund for ASR, water transport infrastructure, and water reuse projects. Unfortunately reuse provisions supported by TXWIN were removed in the final version of the bill, in addition to provisions allowing/promoting water acquisition from other states.

Other key provisions in the bill specifically allow the new fund to be used with political subdivisions as part of Public-Private Partnerships under processes defined in Texas Government Code § 2267, with additional provisions prohibiting use of funds for operations and maintenance of facilities developed under this type of arrangement.

The Texas Water Development Board will be required to adopt administrative rules to enact the Water Supply Fund for Texas considering the criteria which including:

- Intended end users of the water supply, needs of the area to be served by the project, and expected benefit of the project to the area.
- Relationship of the project to the water supply needs of this state overall, the relationship of the project to the state water plan, and the amount of water expected to be produced by the project.

- The availability of money or revenue to the political subdivision from all sources for the ultimate repayment and cost of the project, including all interest.

The legislation allows transfers of the fund to State Water Implementation Fund for Texas (SWIFT), State Water Implementation Revenue Fund for Texas (SWIRFT), the Water Supply for Texas Fund, WSTF, a potential new revolving water fund (as yet to be defined), the Rural Water Assistance Fund, Texas Water Development Fund (D-Fund), and the State Participation Fund.

Portions of the fund are to be allocated to rural political subdivisions, municipalities with populations under 150,000, projects with state and federal permitting "substantially complete" to be determined by the Board, and a new statewide water awareness program, water conservation strategies, technical assistance for water utilities and water loss mitigation strategies. The new water fund and associated programs will have oversight from the SWIFT Advisory Commission.

### **HB 1: General Appropriations Bill & SB 30: Relating to supplemental appropriations and reductions in appropriations and giving direction and adjustment authority regarding appropriations**

Water-related budget highlights include:

#### ***Texas Water Development Board***

- Texas Water Fund: \$1,000,000,000 (contingent on passage of the Constitutional amendment authorized by SJR 75).
- Flood Mitigation Funding (FIF): \$624,949,080
- Clean Water State Revolving Fund Match: \$51,132,249
- Drinking Water State Revolving Fund Match: \$73,918,671
- SRF matching funds unlock \$2.9 billion in federally assisted program funds allocated to Texas to through existing EPA State Revolving Fund programs and funding provided through the "Infrastructure Investment and Jobs Act of 2021" (IIJA).
- Funding to enable the Economically Distressed Areas Program (EDAP) to allocate approximately \$100,000,000 over the biennium.
- TWDB also received funding for most exceptional items requested in its budget, including essential workforce development and retention efforts.

#### ***General Land Office***

- Gulf Coast Protection District "Coastal Management": \$591.7M
- Disaster Recovery Infrastructure Projects: \$906.96 M

**[SJR 75](#): Proposing a constitutional amendment creating the Texas water fund to assist in financing water projects in this state**

This is the Constitutional amendment to enact programs created under SB 28 and create the constitutionally protected funds therein.

- Twenty-five percent of the allocated funds will go to the New Water Supply for Texas Fund.
- SJR 75 will require approval by voters in the 2023 Constitutional Amendment ballot on November 7, 2023.

## CONTRACTING AND PROCUREMENT

**[HB 679](#): Relating to limitations on the use of workers' compensation insurance experience modifier values in soliciting and awarding public and private construction contracts**

Prohibits using or specifying an Experience Modifier which is numerical system that insurance companies use to set workers' compensation premiums as a numerical condition to measure or score safety records in the award or acceptance of a contract.

**[HB 1440](#): Relating to the authority to approve change orders for certain municipal contracts.**

Amends local government code population threshold to assign change order authority of \$100,000 or less to staff rather than the governing body of political subdivisions from 300,000 to 240,000 persons.

**[HB 3507](#): Relating to contracts for the construction, repair, and renovation of certain conservation and reclamation district facilities.**

Amends the Water Code to increase flexibility for purchases of \$150,000 or less and waives notice requirements to advertise solicitations and award certain contracts under the \$150,000 threshold for water districts and water authorities.

**[HB 3437](#): Relating to the authority to approve change orders for certain contracts for the construction, repair, and renovation of water district facilities.**

Amends the Water Code to allow delegation of change order authority to staff for change orders of \$150,000 or less.

**[HB 3485](#): Relating to a contractor's or subcontractor's right to elect not to proceed with additional work under a contract.**

Amends the public Prompt Pay Act in Texas Government Code § 2215 & Chapter 28 of the Texas Property Code to

allow a contractor to elect not to proceed with additional work directed by a governmental entity if the contractor has not received a fully executed change order for the additional work. This applies if the aggregate or anticipated value of the additional work plus any other outstanding additional work requests exceed 10% of the original contract amount, or there is an unsigned change order. The bill also establishes that a contractor or subcontractor who elects not to proceed with additional work as provided by these conditions is not responsible for damages associated with the election not to proceed with work under a change order that is not agreed to by all parties.

**[HB 1817](#): Relating to the validity of a contract for which a disclosure of interested parties is required.**

HB 1817 addresses a loophole in Texas Ethics Commission (TEC) 1295 conflict of interest reporting requirements, which previously allowed the nullification of contract awards for failure to submit required conflict of interest disclosures. The new law requires a governmental entity to provide notice of failure to submit required conflict-of-interest affidavit, allowing the contractor "a right to cure" the oversight and file the appropriate forms to TEC within ten days.

**[HB 2334](#): Relating to an exemption from the plumbing licensing law for plumbing work performed on certain private property.**

Provides that a person is not required to be a licensed plumber under the Texas Occupations Code Chapter 1301 in order to perform work consisting of installing, servicing, or repairing service mains or service lines that provide water, sewer, or storm drainage services on private property in an area that extends from a public right-of-way or public easement to not less than five feet from a building or structure. This exemption only applies to "public works" construction and does not apply to plumbing work performed on private property designated for use as a one-family or two-family dwelling.

**[SB 2440](#): Relating to requiring certain plats for the subdivision of land to include proof of groundwater supply.**

This legislation is intended to ensure that new housing developments have sufficient water resources when groundwater is the intended water supply. SB 2440 requires subdivision developers to provide evidence of sufficient available groundwater for residential housing developments and receive permits from governing municipalities. There are some exceptions in the bill for areas in the Gulf Coast and Carrizo Wilcox Aquifers.

## GENERAL GOVERNMENT & LIABILITY

### **HB 5: Relating to agreements to create jobs and to generate state and local tax revenue for this state.**

This legislation reauthorizes Texas Tax Code Chapter 313 tax incentive legislation. Chapter 313, goals and incentives include the ability to provide tax credits based on types of businesses, jobs created, money invested in communities which includes projects that create new “high-paying” permanent jobs and construction jobs, encourage energy and water infrastructure development including:

- New and expanded dispatchable electric generation.
- Manufacturing
- Facilities related to construction, expansion, and development of natural resources which is undefined and could include water.

### **HB 2127: Relating to state preemption of certain municipal and county regulations.**

Preemption legislation, referred to as the “Death Star” bill, effectively states that local governments cannot pass ordinances or laws not explicitly delegated to them by the state. Gives standing to companies, individuals, and trade associations to bring legal action for violations and allows for recovery of attorney’s fees.

### **SB 29: Relating to prohibited governmental entity implementation or enforcement of a vaccine mandate, mask requirement, or private business or school closure to prevent the spread of COVID-19.**

Prohibits mask mandates, business closures, and mandatory vaccinations with the exception of state assisted living facilities, facilities operated by the Texas Department of Criminal Justice or the Texas Juvenile Justice Department, and government owned healthcare facilities.

### **HB 2007: Relating to a certificate of merit in certain actions against certain licensed or registered professionals.**

Provides that a third-party plaintiff that is a design-build firm or a design-build team, or an architect, engineer, or other members of a design-build firm or design-build team, is not required to file a certificate of merit (relating to requiring a claimant to be required to file with a complaint for damages an affidavit of a third-party licensed architect, licensed professional engineer, registered landscape architect, or registered professional land surveyor) in connection with filing a third-party claim or cross-claim against a licensed or registered professional. This applies under the circumstances where the action or

arbitration proceeding arises out of a design-build project in which a governmental entity contracts with a single entity or integrated design and construction company, as opposed to a joint-venture or design-build team, to provide both design and construction services. This applies to the construction, expansion, extension, rehabilitation, alteration, or repair of a facility, a building or associated structure, a civil works project (which could include water facilities), or a highway project.

### **HB 2965: Relating to certain construction liability claims concerning public buildings and public works.**

This legislation concerns construction defect notices and the “right to cure” said defects without engaging in litigation. In its original form, the legislation removed exemptions to civil works projects defined in Gov. Code 2269 which would have created a fundamental standard of fairness for public works construction projects. The legislation also stated that this notice cannot be waived. TXWIN supported the legislation in its original form. While this legislation was moving through the House, certain entities sought exemptions which would have established unreasonable legal distinction between various types of infrastructure, specifically for certain water authorities. The bill was ultimately narrowed to only include the “no waiver” provision. This legislation should be reintroduced to include water infrastructure in the future to ensure fair risk allocation and efficient project administration.

### **SB 2038: Relating to the release of an area of a municipality's extraterritorial jurisdiction by petition or election.**

Allows for the release of property from the extraterritorial jurisdiction (ETJ) of a municipality under certain circumstances. This legislation could have implications for the ability to execute construction projects and the utilization of eminent domain, right of way and other legal authorities used in conjunction with the development of infrastructure.

Overall, the 88th Regular Session of the Texas State Legislature should be regarded by even the most casual observer as a significant and meaningful benchmark for the future, especially in terms of the intense focus and prioritization of water issues by lawmakers, and an unprecedented collaboration on water issues by key stakeholders. From the standpoint of TXWIN and many of our other partners in Texas water, what was accomplished this session was foundational especially in terms of a greater interest and engagement in water policy and funding. Fortunately, this phenomenon coincides with a very real and timely need for Texas and Texans to focus and commit more significant effort and resources to secure our shared water future. Public engagement and continued focus on water issues is essential to accomplish this task.

Prior to the 88th Regular session the fundamentals of Texas water were strong. As a state we have far surpassed our national peers in terms of planning and funding, but to ensure adequate investment in our water future, we need to acknowledge the real and growing cost of water infrastructure. Texas must implement intelligent water strategies aligned in sound science to accompany and drive the construction of pipes, water treatment plants, flood control projects, and the development of new and additional water supplies. Fair contracting law, efficient use of limited funds and construction policy is an important part of the future of Texas water.

In the near-term we can all support Proposition 6 ([SJR 75](#)) on the Constitutional Amendment ballot in November 2023. Passing Prop 6 which will unleash the promise of SB 28 which will be a strong addition to our “toolkit” allowing more affordable options to invest in our current and future Texas water needs. There is still much work to be done and TXWIN members look forward to the opportunity to build the future of Texas Water!

## THE MOST CONSEQUENTIAL LEGISLATIVE SESSION FOR WATER IN A DECADE HAD A CRUCIAL BLIND SPOT: GROUNDWATER PLANNING AND MANAGEMENT

By Vanessa Puig-Williams, Director, Climate Resilient Water Systems, Texas, Environmental Defense Fund

*Environmental Defense Fund (EDF) is a United States-based nonprofit environmental advocacy group. The group is known for its work on issues including global warming, ecosystem restoration, oceans, and human health, and advocates using sound science, economics and law to find environmental solutions that work.*

While the 88th legislative Session was, on all accounts, a water session, Texas has more to do to ensure that we have safe and ample water for people, wildlife, and the environment in the future. Persistent drought, flooding, pollution, and infrastructure failures are water challenges that state leaders must continue to address. Indeed, the Legislature made significant investments in water during the most recent regular session, allocating roughly one billion to support flood infrastructure development and establishing a new billion-dollar water fund, which, if approved by voters this November, will finance the development of new water supply projects and badly needed water infrastructure improvements across the state. Importantly, the new water fund prioritizes water infrastructure improvements in rural Texas, where water infrastructure is often in disrepair and resources to fix problems are limited. However, these investments, while substantial and important, overlook a critical component of water security – the sustainability of Texas’ water resources, particularly groundwater resources – and the data and modeling water managers and planners need to proactively manage them.

Water in underground aquifers is one of Texas’ most vital natural resources. It provides over half of the water used in the state, from agriculture to industry to cities. Outflows from aquifers sustain flows in springs, streams and rivers that support additional water uses, fish and wildlife, and recreation. Aquifers are, indeed, a critical component of Texas’ water infrastructure, just as much as reservoirs, drinking water systems and treatment plants. Yet, Texas is underinvesting in the management of aquifers.

Despite a \$30 billion historic budget surplus, the Legislature did not approve the Texas Water Development Board’s (TWDB) request for approximately \$8 million to support water data enhancements. The Legislature allocated half of what TWDB requested to support statewide groundwater modeling (reducing TWDB’s request from \$1,044,075 to a mere \$522,038) and half of what TWDB requested to support the Water Data Hub, an online platform that will house a variety of water data accessible to the public (reducing TWDB’s request from \$2,651,936 to \$1,325,968). Additionally, the Legislature failed to provide additional funding for the Texas Mesonet Program, a network of weather stations that collect weather data to help

officials understand and respond to changing weather conditions across the state. To summarize, compared to the billions the Legislature allocated for developing new water supplies, water infrastructure improvements, and flood preparedness, the Legislature appropriated just under \$2 million to support water science this session.<sup>1</sup>

This lack of investment in groundwater science is particularly concerning. The Texas Water Development Board’s entire 2022 budget for Technical Assistance and Modeling Programs (which includes both surface water and groundwater) was only about \$ 2.6 million in 2022 (reduced from about \$ 4.5 million/year in the 2010/2011 budget), out of a total budget of about \$260 million.<sup>2</sup> This compares with about \$ 10 million per year for “water planning,” and with billions spent every year to build and repair water infrastructure throughout the state.<sup>3</sup>

Moreover, the legislature has provided little in the way of financial or technical assistance to groundwater conservation districts, which are the preferred method of managing Texas groundwater. The lack of an investment in groundwater is an oversight that state leaders must address next session.

In addition, this session the Legislature ignored opportunities to update and enhance groundwater and surface water modeling, to increase groundwater and surface water data, and to provide groundwater managers with data related to the sustainability of aquifers. [HB 3990](#) (Kacal) required TWDB to identify areas of the state with significant groundwater and surface water interaction and that lack adequate data and modeling and to prioritize these areas for study. The bill would have paved the way for more sophisticated, integrated watershed management in Texas, resulting in better protections for both groundwater and surface water resources in the future. Similarly, [House Bill 4532](#) (Kacal/Blanco/Zaffirini) would have required TWDB to model the maximum sustained pumping volumes of aquifers in Texas and to provide this data to groundwater conservation districts to utilize when they adopt desired future conditions. The bill would have enabled groundwater conservation districts to make more informed planning and management decisions, particularly related to the long-term sustainability of aquifers and the conservation of groundwater.

<sup>1</sup> This is based on exceptional item appropriations to the Texas Water Development Board in H.B. 1, General Appropriations Bill, 88th Legislature, Regular Session ([Texas 2023](#)).

<sup>2</sup> See S.B 1, 87th Legislature, Regular Session ([Texas 2021](#)).

<sup>3</sup> See, e.g., <https://comptroller.texas.gov/economy/fiscal-notes/2019/apr/funding-water.php>.

Both bills passed the House but did not receive a hearing in the Senate.

Aquifers are infrastructure. State leaders should view investments in groundwater science and sound, science-based groundwater management as critical to the state planning and water infrastructure financing picture.<sup>4</sup> Planning and financing of water projects may depend on assumptions about aquifer capacity, aquifer drawdown, and groundwater contributions to stream flow. Ensuring these assumptions are correct is a due diligence aspect of infrastructure planning and financing that requires continuous development of groundwater science.

The Legislature passed a few positive groundwater bills this session that should result in small, but necessary improvements to groundwater management, hopefully, precipitating support for more substantial policy advancements and investments in science next session. [House Bill 3278](#) (Price/Blanco) creates more transparency in groundwater planning – the process by which groundwater conservation districts adopt long term management goals or desired future conditions (DFCs) for the aquifers they regulate. Under the new law, groundwater conservation districts must post documentation supporting a proposed DFC online. This change will enable greater public participation and enhance information access in what is an often obscure process that has real consequences for communities across Texas.

[House Bill 3059](#) (King/Perry) provides groundwater conservation districts with additional tools and funding to address impacts to wells caused by large groundwater export projects – a growing challenge in rapidly developing parts of the state. The bill increases the fee rate that a groundwater conservation district can charge for the export of groundwater and, importantly, authorizes groundwater conservation districts to use export fees to mitigate impacts to wells, conduct groundwater monitoring and aquifer science, collect data, and develop alternative water supplies.

[Senate Bill 2440](#) (Perry/Burrow) recognizes that there is insufficient groundwater in some areas of Texas to support new development. Cities and counties must now require developers to provide a certificate of groundwater availability before approving subdivisions where the water supply is groundwater. Previously, this was voluntary. The change is a prudent step that necessitates continued development of groundwater science and greater coordination between cities, counties, and groundwater conservation districts. While the legislation allows local governments to waive the requirement for small developments or developments over the Carrizo-Wilcox or

Gulf Coast Aquifers, (where arguably there is more groundwater available) they must first determine sufficient groundwater available based on credible evidence of groundwater availability. As with the groundwater availability certification, waivers will require groundwater science to demonstrate availability.

Although it is not a groundwater bill, [Senate Bill 1289](#) (Perry/King) could conserve rural groundwater resources by enabling buildings in urban areas to treat and reuse wastewater onsite. This will reduce the need for cities to import groundwater as their water supply demands increase. The bill amends Chapter 26 of the Water Code to remove a regulatory impediment that has made building scale wastewater reuse difficult in Texas and directs the Texas Commission on Environmental Quality (TCEQ) to amend its rules to implement the new changes to statute. Currently, to treat and reuse wastewater, the TCEQ requires an entity, referred to as a reclaimed water production facility, to obtain a Texas Pollutant Discharge Elimination System (TPDES) discharge permit as an alternate means of disposal in event the entity cannot reuse all the wastewater generated. Additionally, TCEQ rules require the entity to own the wastewater treatment facility associated with the discharge permit. These onerous requirements have made building scale reuse cost prohibitive for many entities in Texas desiring to construct innovate, water conservation-oriented buildings in urban areas. To address this issue, Senate Bill 1289 bill amends Chapter 26 of the Water Code to allow a reclaimed water production facility to treat and reuse wastewater onsite without the need to obtain a discharge permit from the TCEQ. To address instances where treated wastewater cannot be reused, the law requires the entity to have permission to dispose of treated wastewater into an existing wastewater collection system.

Finally, the formation of a bipartisan Water Caucus in the House of Representatives, comprised of nearly half of the members of the House, is another significant outcome of the 88th Legislative Session worth noting. Unlike other caucuses, which are often formed along party lines to support specific issues and legislation, the Water Caucus, chaired by Representative Tracy King, is bipartisan and purely educational, serving as a forum to educate members of the Legislature and to foster the leadership needed to solve Texas' pressing water challenges.

Texas wrapped up its most consequential legislative session for water policy in at least a decade, but the Legislature missed opportunities to further support groundwater planning and management. With Texas facing rapid population growth and persistent drought, it is imperative that the state take further action to ensure that groundwater conservation districts have the tools and resources they need to proactively manage groundwater. This session, state leaders prioritized funding for developing new water supply projects and infrastructure improvements. Next session, state leaders must focus on groundwater.

<sup>4</sup> In 2016, the California legislature enacted AB 2480, which recognizes the state's watersheds as "an integral component" of its water infrastructure. This statutory language opens the door to using traditional infrastructure financing approaches, such as bonds and other tools, for restoration and protection of watersheds and allows them to be valued as key assets in California's infrastructure inventory.

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## THE NEEDLE MOVED FORWARD

By Jeremy B. Mazur, Senior Policy Advisor, Texas 2036

*Texas 2036 is a nonprofit organization building long-term, data-driven strategies to secure Texas' continued prosperity for years to come. We engage Texans and their leaders in an honest conversation about our future, focusing on the big challenges. We offer non-partisan ideas and modern solutions grounded in research and data to break through the gridlock on issues that matter most to all Texans. Smart strategies and systematic changes are critical to prepare Texas for the future.*

For the first time in ten years, water infrastructure was a priority for the Texas Legislature. The last big water infrastructure session of the Legislature occurred in 2013. Then, on the heels of the worst one-year drought of record in 2011, both the Legislature and Texas voters approved the creation of the \$2 billion State Water Implementation Fund for Texas (SWIFT) for financing water supply projects. The SWIFT's creation was a significant deal at the time. After decades of talking about it, the state's water policy now included a financial strategy for delivering the water supply projects listed in the State Water Plan.

In the intervening decade, droughts ebbed and flowed, floods of near-biblical proportions came and went, and water and wastewater systems aged as building and maintenance costs escalated. Texas' water infrastructure problems still needed to be solved.

As fate or fortune would have it, a series of circumstances set up the 88th Session of the Texas Legislature to become the most comprehensive session focused on water infrastructure in a decade. These circumstances provided policymakers with a substantial window to move Texas' water policy needle forward - for the better.

For starters, the Sunset Commission reviewed the state's three key water agencies: the Texas Water Development Board, the Texas Commission on Environmental Quality, and the Public Utility Commission of Texas. Each review culminated in a Sunset bill for the applicable agency, legislation that carried tremendous implications for state water planning, regulation, and financial management.

Next, 2022 included several high-profile stories about water system failures. While the nation's most severe water system catastrophe unfolded in Jackson, Mississippi, several Texas towns, including [Odessa](#), [Laredo](#), and [Zavalla](#), endured outages or extended boil water notices due to the poor condition of their water systems. In addition, millions of Texans living in [Austin](#) and [Houston](#) had to live with boil water notices due to system management issues.

Then there was drought. According to the *US Drought Monitor*, [2022 began with just over 50% of the state in the severe-to-worse drought category](#). By mid-August, drought conditions reached a fever pitch, with [87.5% of Texas in severe drought](#) and nearly 30% of the state in the exceptional drought category. These dry conditions precipitated a series of calamities, including widespread wildfires, substantial crop and livestock losses, and diminishing water supplies. The water supply situation within the Lower Rio Grande Valley became so dire that planners anticipated having just days of water left. Fortunately, a well-placed low-pressure weather system in mid-August provided needed relief.

Lastly, there was money. In late 2021 Congress passed the [U.S. Infrastructure Investment and Jobs Act](#), also known as IIJA. Aimed towards course-correcting decades of declining federal spending on water and wastewater infrastructure, IIJA appropriates \$50 billion towards states' clean and drinking water revolving funds over a five-year window. Provided the Legislature appropriated required matching funds, IIJA would endow Texas' state revolving funds administered by the Texas Water Development Board (TWDB) with nearly \$2.5 billion during that five-year window.

Beyond federal largesse, state coffers, unlike most west Texas reservoirs, were full and overflowing. High oil and gas prices, combined with robust economic activity, contributed to a historic, unprecedented budget surplus of \$32.7 billion. This surplus spelled opportunity for Texas' long-term water infrastructure challenges, which include the need for more water supplies for a drought-prone state and the growing problem of aging, deteriorating water and wastewater systems.

Interestingly, voters were enthusiastic about the idea of greater state spending on water infrastructure. In September 2022, Texas 2036's Texas Voter Poll revealed that [82% of voters supported spending a portion of the surplus](#) on developing new water supplies, while 84% favored using these funds to address the aging, deteriorating water infrastructure problem. Five months later, in February 2023, [89% of Texas voters supported using \\$5 billion](#), or about 15% of surplus funds, to help Texas communities fix aging water infrastructure. Of that cohort, 63% of Texas voters across all demographics, geography, and party affiliations strongly supported this proposal.

Texas 2036's poll also asked voters about other potential spending priorities, [including parks, flood prevention, broadband, workforce development, and cybersecurity](#). All of these proposals received a majority of support. None of these spending proposals received a level of support as strong as that for water infrastructure, however. While voters did not specify

why they supported water infrastructure funding, it is fair to postulate that stories about draining reservoirs and aquifers, incessant boil water notices, failing water systems, and the ever-present specter of drought informed voters' preferences. Regardless, in pure political parlance, water is a winner.

When the 88th Session began on January 12, the key ingredients were in place for a dynamic, historic water infrastructure session: water agency Sunset bills, high-profile water system failures, drought, and a landmark budget surplus. Moreover, Texas voters were interested in seeing the state take action toward addressing water infrastructure challenges. Back in January, water policy professionals and [some legislators](#) were optimistic that the 88th Legislature would dedicate renewed attention and resources to Texas' water challenges. One hundred and forty days later, the proverbial needle moved forward.

### Texas 2036's water agenda

In 2022, Texas 2036 collaborated with the Water Finance Exchange and the Texas Water Foundation to host a series of stakeholder meetings to discuss the challenges facing Texas' water and wastewater infrastructure and the opportunities presented by the US Infrastructure Investment and Jobs Act. Over 40 organizations, including state agencies, water industry groups, nonprofits, and local water utilities, participated in these discussions. The salient issues highlighted throughout these discussions included the need for greater technical assistance capacity for facilitating small, rural, and disadvantaged communities' participation in state financial assistance programs, how regional solutions achieve economies of scale within the water sector, and the importance of a state financial strategy for both leveraging IJJA dollars and addressing the growing problem of aging, deteriorating water and wastewater infrastructure.

These stakeholder discussions informed Texas 2036's development of the [Water Infrastructure Blueprint](#) for the 88th Legislature. Released in January 2023, the Blueprint included five key findings. First, and based on available data, the state must address the aging, deteriorating water infrastructure problem. Second, the Legislature needed to maximize the state's leverage of IJJA dollars to better manage the water infrastructure problems endured by small, rural, and disadvantaged communities. Third, Texas must expand its technical assistance provider capacity to deliver financial assistance to small, rural, and disadvantaged communities more effectively. Fourth, state policy must encourage regional solutions to achieve better economies of scale regarding water, rate base, and workforce utilization. And lastly, Texas' water industry faces a shortage of qualified workers.

In light of these major findings, the Blueprint offered a series of recommendations developed by Texas 2036 of what the Legislature could do to address Texas' growing water infrastructure

crisis. One of the Blueprint's salient recommendations was to create a new, constitutionally-dedicated fund that assists water and wastewater utilities that are either failing or at risk of failing. In addition to creating a new water fund, the Blueprint recommended that the Legislature appropriate the matching dollars necessary for maximizing the state's receipt of federal IJJA funds. Other recommendations included legislative actions to improve regional solutions among water utilities, expand the state's technical assistance capacity, and address the water workforce shortage. These recommendations guided Texas 2036's support for several measures during the 88th Regular Session, including SB 28, SJR 75, HB 3232, and HB 1845. The solutions enacted by these measures are described in greater detail in subsequent sections of this article.

In addition to the recommendations within the Water Infrastructure Blueprint, Texas 2036's legislative agenda for the 88th Session [concentrated on five specific goals](#). These goals included: (1) funding solutions to address Texas' growing water needs; (2) supporting the Texas Water Development Board's Sunset bill; (3) developing accurate water planning data; (4) addressing the state's growing water workforce shortage; and (5) and establishing frameworks for the development of regional water markets that encourage the voluntary transfers of water.

### The water infrastructure omnibus package

The headline water measures of the 88th Session were [SB 28 \(Perry/Tracy King\)](#) and [SJR 75 \(Perry/Tracy King\)](#). The initial bill, SB 28, creates two new funds, the New Water Supply for Texas Fund and the Texas Water Fund, to address Texas' water infrastructure challenges. Both funds are administered by the Texas Water Development Board. The first fund, the New Water Supply for Texas Fund, shall provide financial assistance to political subdivisions for water supply projects that create new water supplies. The operative focus here is on new water supplies, projects that expand the inventory of water molecules comprising the state's water supply portfolio. Eligible projects include seawater and brackish water desalination, produced water recycling, aquifer storage and recovery, and the development of transportation infrastructure to convey water from the aforementioned projects to where it is needed. SB 28 tasks TWDB with the ambitious goal of developing at least 7 million acre-feet of new water supplies over the next decade through the New Water Supply for Texas Fund.

In addition to the New Water Supply for Texas Fund, SB 28 creates the Texas Water Fund. This fund shall be used for water infrastructure projects for rural communities and small and mid-sized cities, prioritized according to risk or need. The Texas Water Fund may also provide financial assistance for water conservation strategies, water loss mitigation projects, and statewide public awareness programs regarding water.

Beyond expanding the state's financial strategy for addressing long-term water infrastructure challenges, SB 28 broadens technical assistance outreach to small and rural communities and those with significant water loss issues. The bill authorizes TWDB to use the Rural Water Assistance Fund for outreach, financial, planning, and technical assistance to assist rural political subdivisions in obtaining and using financing from the different financial assistance programs administered by the agency. Further, SB 28 requires that TWDB establish a program to provide technical assistance to retail public utilities in conducting water loss audits and applying for financial assistance from TWDB to mitigate water loss. TWDB shall prioritize the provision of technical assistance based on water loss audits, the population served by the utility, and the integrity of utility's system.

Senate Bill 28 was part of a larger water infrastructure package approved by the 88th Legislature that addressed Texas' water infrastructure challenges. Other measures in this package include [SJR 75 \(Perry/Tracy King\)](#) and [SB 30 \(Huffman/Bonnen\)](#). SJR 75 proposes to amend the Texas Constitution to create the Texas Water Fund administered by TWDB for providing financial assistance for water infrastructure projects. The proposed amendment authorizes TWDB to distribute money from the Fund to other funds or accounts administered by the agency without further legislative appropriation. These eligible funds and accounts, which SB 28 specifies, include the Water Assistance Fund, New Water Supply for Texas Fund, State Water Implementation Fund for Texas, State Water Implementation Revenue Fund for Texas, the state's clean and drinking water revolving funds, Rural Water Assistance Fund, Statewide Water Public Awareness Account, Texas Water Development Fund II, and the state participation account within the Texas Water Development Fund II.

Texas voters will decide on this new fund's creation during November's constitutional amendment election. If voters approve the constitutional amendment creating the Fund, then the contingency funding provision within SB 30 appropriates \$1 billion to the Fund. Conversely, if voters reject the November's ballot proposition creating the Texas Water Fund, that \$1 billion would remain in the state treasury. One of the provisions in SJR 75 states that a minimum of 25% of the initial appropriation to the Texas Water Fund shall be transferred to the New Water Supply for Texas Fund.

### **TWDB Sunset**

While the water infrastructure package of SB 28, SJR 75, and SB 30 granted the 88th Regular Session with the imprimatur of a "water session," other essential bills, including the Texas Water Development Board's (TWDB) Sunset bill, contributed to this narrative. TWDB's Sunset review occurred during the legislative interim preceding the 88th Session. The

Sunset Commission found TWDB a well-run agency and recommended that the Board be reviewed again in 12 years in 2035. This recommendation, and others made by Sunset staff, was incorporated in [HB 1565 \(Canales/Perry\)](#).

HB 1565 included a noteworthy provision relating to the regional water planning process for developing the State Water Plan. This new provision allows regional water planning groups (RWPGs) to use droughts worse than the Drought of Record of the 1950s as the basis for future water supply planning. While TWDB's existing rules allow RWPGs to use worse drought conditions, HB 1565 embeds an important recognition within the Texas Water Code that future droughts may be worse than the current planning baseline. This change was [recommended by Texas 2036](#) during TWDB's Sunset review in 2022.

The Drought of Record of the 1950s was a severe, prolonged drought that had a lasting effect on the state's economy and subsequent development. Data from [paleoclimatic records](#) indicate that the 1950s drought was not the worst Texas ever endured, however. Moreover, data from [a report on extreme weather trends](#) prepared by Texas 2036 in collaboration with the Office of the State Climatologist at Texas A&M University reveals that future droughts may become more severe. Given these findings, Texas 2036 recommended that regional water planners be allowed to adjust the drought scenarios they use for planning purposes to account for the possibility of worsening conditions. Thanks to Representative Terry Canales' leadership, the recommendation that RWPGs be allowed to use drought conditions worse than the Drought of Record was included in HB 1565.

This represents a significant change in state water policy within the Texas Water Code. In addition to recognizing that future droughts may be more severe, the change made by HB 1565 provides legislative direction for the potential scaling of future water supply projects and strategies responsive to more extreme droughts. This critical change expands the state's resilience strategy for addressing future drought challenges.

### **Regulatory Reforms**

The Legislature approved several important regulatory reforms for the water sector during the 88th Regular Session. These reforms affect differing aspects of state water policy, including regional solutions for water and wastewater systems, groundwater management, certificates of convenience and necessity (CCNs) for water and wastewater service, and water reuse. Texas 2036 supported several bills based on specific recommendations within the Water Infrastructure Blueprint or alignment with the goal of providing water for a growing state.

### **Regional Solutions**

Despite the Legislature's articulated policy preference for regionalization found throughout the Texas Water Code, Texas

still has over 10,000 public water systems and wastewater operators according to Texas Commission on Environmental Quality (TCEQ) data. Interestingly, before 2023, state regulatory policy partially worked to discourage regional solutions among water and wastewater systems, undermining the Legislature's preference for regionalization. Previously, if a water or wastewater utility other than a city or a county absorbed another system noncompliant with health, safety, or environmental protection requirements, those regulatory liabilities would transfer to the absorbing utility. This served as a regulatory disincentive for larger or well-run utilities to absorb distressed utilities with noncompliance challenges.

The Legislature approved [HB 3232 \(Rogers/Perry\)](#) to fix this problem. HB 3232 removes this regulatory disincentive by providing "safe harbor" protection to healthy water and wastewater utilities that absorb distressed systems as part of a regional solution. The bill authorizes TCEQ to enter into a compliance agreement with an absorbing utility where the Commission will not initiate an enforcement action against that utility for existing or anticipated violations accrued by the utility being absorbed, provided that there is a compliance agreement in place to address the problems contributing to noncompliance.

House Bill 3232 removes the existing regulatory disincentive for the regionalization of water and wastewater service, opening the door for the delivery of more efficient water and wastewater service through the development of regional solutions. Texas 2036 recommended this regulatory reform as part of its Water Infrastructure Blueprint for the 88th Regular Session.

### **Groundwater**

The Environmental Defense Fund's Vanessa Puig-Williams [has famously said](#), "aquifers are infrastructure." Like reservoirs and elevated storage tanks, aquifers are integral to the water supply to communities that rely on groundwater. More critically, this statement also meaningfully implies that aquifers, like other infrastructure resources, have limits concerning the demands they can sustain over time. In light of this, [SB 2440 \(Perry/Burrows\)](#) enacts a substantive change that carries significant implications for future groundwater development policy.

This bill requires that a developer submitting a plat for approval by a municipal or county authority for a new subdivision that will be supplied with groundwater include a statement prepared by a professional engineer or geoscientist that certifies that adequate groundwater is available for the subdivision. Previously, cities and counties were authorized to request these groundwater availability certifications; they were not required as a part of the development process. SB 2440 gives cities and counties the flexibility to waive the requirement for the certification of groundwater availability if they determine based on credible evidence that sufficient groundwater supplies exist for the subdivision and either the subject tract is supplied by the Gulf Coast or Carrizo-Wilcox aquifers or the proposed

subdivisions divides the tract into no more than ten parts. The bill's requirements take effect on January 1, 2024.

Despite the limited exceptions, SB 2440 links the feasibility of future development dependent on groundwater to the availability of groundwater resources. In addition, the bill aligns the potential for future development growth with data on groundwater availability. This change recognizes that aquifers, especially for some areas of the state, are not limitless infrastructure resources: absent groundwater availability within a given aquifer, economic development – and perhaps human habitation – cannot be sustained.

### **CCNs for Water and Wastewater Service**

During the last big water infrastructure legislative session in 2013, the Legislature transferred regulatory authority over water and wastewater utility rates and CCNs from TCEQ to the Public Utility Commission (PUC). This transfer substantively changed the administrative handling of utility rate amendments and CCNs: what was once a simple process at TCEQ required an administrative hearing for resolution before PUC. The Sunset Commission acknowledged this issue during its [review of PUC](#) before the 88th Regular Session. Given this finding, the Sunset Commission adopted a management action recommendation directing PUC to comprehensively review its water and wastewater rules, processes, and guidance documents to identify and address areas for improvement.

Separate from Sunset's recommendation, the Legislature also approved [SB 893 \(Zaffirini/Tracy King\)](#) authorizing PUC's executive director to correct a water or wastewater utility's CCN without going through the formal amendment procedure. SB 893 grants PUC's executive director the latitude to correct a typographical error, change the name of a CCN holder, rectify mapping errors, and resolve other non-substantive errors. These changes streamline the regulatory process for providing water and wastewater service to Texas communities, saving water and wastewater utilities time and money by allowing them to forgo the need for an administrative hearing to make these changes to their CCN.

### **Water Reuse**

Another significant regulatory reform approved during the 88th Regular Session concerns water reuse. [SB 1289 \(Perry/Tracy King\)](#) allows developments with on-site wastewater treatment facilities to treat, recycle, and reuse wastewater for on-site disposal purposes without getting a separate permit from TCEQ for those disposal purposes. This change streamlines a regulatory hurdle for water reuse, encouraging innovative and efficient use of limited water resources. SB 1289 took effect on June 18, 2023.

## Water Workforce

The success of any utility in meeting the needs of its customers, and of any state investment in local water and wastewater infrastructure, hinges on the availability of qualified personnel to operate those systems. Conversely, the absence of qualified personnel invites the perils of regulatory noncompliance, system mismanagement, and utility failure. Texas' water and wastewater utility operators are acutely aware of this problem. The [2022 Water Capital Needs Survey](#) conducted by the Texas Water Infrastructure Network and Water Opinions LLC revealed that 82% of water utilities surveyed are worried about their current or future workforce. These findings were consistent with the [previous year's survey results](#) registering similar levels of concern.

In an effort to begin addressing this looming problem, the Legislature passed [HB 1845 \(Metcalf/Perry\)](#) requiring that TCEQ establish a provisional certification program for individuals without high school diplomas to serve as entry-level water or wastewater system operators. This provisional certification program would establish a pathway for Texans without a high school diploma – or those still in high school – to enter the state's water workforce. The pathway established by HB 1845 is a work-based learning opportunity where the individual is exposed to workplace culture and learns skills directly from practitioners. Moreover, the pathway aligns with the state's [official workforce development strategy](#) of expanding opportunities for work-based learning experiences. HB 1845 takes effect on September 1, 2023.

## Better Data

Texas 2036's legislative agenda for the 88th Session included developing accurate water planning data. These data are essential for determining current and future water availability and assessing existing infrastructure's condition. Towards these ends, the Legislature approved three bills that enhance data collection on water availability and the condition of our state's drinking water infrastructure.

The first, [HB 2759 \(Ed Thompson/Perry\)](#), creates the TexMesonet Hydrometeorology Network within TWDB as a statewide resource for hydrometeorological data for weather forecasting, flood preparedness, drought monitoring, wildfire management, water resource planning, water conservation, agricultural readiness, industrial readiness, and related business readiness and productivity. The bill requires that the Network establish a series of stations across Texas to monitor hydrometeorological conditions, serve as a centralized repository for hydrometeorological data, and provide technical assistance for collecting these data.

HB 2759 codifies the TexMesonet Network already administered by TWDB and enacts a [recommendation made by the](#)

[Board](#) for the 88th Session. Establishing TexMesonet within the Texas Water Code ensures the continued operation of this data collection network and repository, allowing for the maintenance of both contemporary and longitudinal water-related data sets.

Another water data bill approved by the Legislature was [HB 2460 \(Tracy King/Perry\)](#), which requires that TCEQ develop updated water availability models for the Guadalupe, Lavaca, Nueces, San Antonio, San Jacinto, and Trinity river basins. These data will provide state and regional water planners and TCEQ's surface water permitting program with a clearer understanding of the water volumes available in each basin.

Beyond meteorological and hydrological data collection, the Legislature also approved [HB 3810 \(Landgraf/Perry\)](#), improving the collection of data on the condition of drinking water systems. To be sure, HB 3810 does not explicitly contemplate the collection of systems' data. Instead, HB 3810 requires that a nonindustrial public water supply system maintain internal procedures to notify TCEQ of a condition that caused or could cause a public water supply outage or prompt the issuance of a boil water notice, do-not-use advisory, or a do-not-consume advisory. This change standardizes how drinking water utilities report water outages, boil water notices, or other advisories to TCEQ. Implementing this requirement will improve state data quality and give state regulators and the public a clearer picture of those utilities having problems delivering safe, clean drinking water.

## Water Markets

Texas 2036's goals for the 88th Session included the development of regional water markets to facilitate the voluntary transfers of water. Data from two forthcoming case studies of functioning water markets in Texas – one for surface water in the Rio Grande Valley, the other for groundwater within the Edwards Aquifer – reveals that markets facilitate the efficient and effective allocation of water resources in a drought-prone state. In particular, the surface water market in the Rio Grande has allowed water to move from lower-valued crops to higher-valued crops that require less water, particularly during droughts. The Rio Grande market has also facilitated the supply of water towards growing municipal demands within the region. The Edwards Aquifer water market contributed to a decline in overall aquifer water use and a substantial reduction in per capita use, enabling the transfer of water rights from lower-value uses to those with a higher-value. It has also allowed for the creation of new tools to manage water during droughts. These findings, among others, will be described in greater detail in a report released by Texas 2036 later this year.

Given these preliminary research findings, Texas 2036 supported [HB 4623 \(Goldman\)](#), which proposed expanding the scope of the regional water planning process used to develop

the state water plan to include the consideration of water markets. In particular, the bill allowed RWPGs to identify opportunities creating and establishing local or regional water markets. This change would enable regional water planning groups to consider how water markets could contribute to more effective water use, including less water use or the reallocation of water resources to other demands. Moreover, HB 4623 would have provided clear and concise legislative authorization for regional water planners to consider opportunities for water markets as a water management strategy. HB 4623 was unanimously approved by the House of Representatives but failed to move in the Senate in the closing weeks of the 88th Regular Session.

### Postscript: Competing Priorities & the Road Ahead

For better or worse, water was one of many funding priorities for the 88th Legislature. Other compelling policy priorities that garnered appropriators' attention included property tax relief, broadband infrastructure, state park acquisition, electric generation reliability, and public-school safety. Throughout the legislative session, water advocates, including Texas 2036, recommended appropriating \$3-5 billion as a meaningful down payment toward addressing the state's long-term water infrastructure challenges. Allied organizations put forth a yeoman's effort towards this funding goal.

Ultimately, the Legislature approved \$1 billion for the new Texas Water Fund provided voters approve the Fund's creation in this November's constitutional amendment election. While this represents an essential initial down payment, Texas' long-term water needs require sustained investment. The [2022 State Water Plan](#) forecasts that Texas will need to spend \$80 billion over the next 50 years to develop and implement water supply projects and strategies to avoid water shortages during drought. Of that \$80 billion, \$47 billion in financial assistance will need to be provided by the State of Texas. (This amount may exceed the financial capacity of the State Water Implementation Fund for Texas established in 2013 to assist with the capital costs of

water projects identified in the 2012 State Water Plan.) Looking beyond water supplies, the price tag for fixing aging [drinking water](#) and [wastewater](#) infrastructure exceeds \$70 billion over the next 20 years according to federal cost estimates.

Should Texas voters ratify the fund in November, the \$1 billion appropriation for the Texas Water Fund will help address these long-term water infrastructure challenges. As will the matching funds the Legislature appropriated for the state to maximize its receipt of available IJA dollars. Still, the magnitude of Texas' water infrastructure challenges necessitate a sustained, consistent financial strategy. Towards that end, [HJR 169 \(Clardy\)](#) offered a bold – and needed – vision: a constitutionally-dedicated revenue stream for water infrastructure. This change would align the state's financial strategy for water infrastructure with those currently deployed for highways and parks. HJR 169 passed the House unanimously. While it did not receive Senate approval, its progress opens the door for a more extensive policy conversation leading into the 2025 legislative session.

Still, the water policy needle moved meaningfully forward in 2023. If voters approve the Texas Water Fund in November, the state's financial strategy will be enlarged for the first time since 2013 to address escalating water infrastructure challenges. In the meantime, TWDB received a clean bill of health through the Sunset review process, and regional water planners now have legislative encouragement to consider planning for worsening droughts. Moreover, the regulatory reforms and data collection measures approved during the 88th Session establish smart foundations for addressing other water policy matters. Lastly, the Legislature addressed the growing problem of needing a qualified water workforce. While the 88th Session will go down in the books as a historic "water session," the session adjourned *sine die* with the doors open to other critical policy discussions, including those relating to water markets and the need for a sustained financial strategy for addressing Texas' long-term infrastructure challenges.