



A PROPOSAL FOR ENVIRONMENTAL FLOW PROTECTION 2004

An effective approach to protecting environmental flows in Texas must address at least three basic issues:

- I. The need to formally set aside reasonable amounts of unappropriated water, where they are available, for environmental flows.**
- II. The need to facilitate the conversion of reasonable amounts of existing consumptive water rights to environmental flow protection, where necessary.**
- III. The need to incorporate conditions protective of environmental flows, where necessary, when authorizing amendments to existing, but unperfected, water rights.**

BACKGROUND

We need to act quickly while we still have amazing fish and wildlife resources and outdoor recreational opportunities that require protection, rather than restoration.

Fortunately, a large percentage of surface water rights in Texas is currently unused, which accounts for much of the environmental flows available during drought conditions:

Total authorizations for consumptive use are around 22 million acre-feet of water per year and the vast majority of those authorizations were issued prior to 1985 and without conditions to protect environmental flows.

The total amount of surface water available on a reliable basis during drought conditions is about 14.9 million acre-feet per year. (Vol. 1, 2002 State Water Plan, Figure 5-17).

As of 1999, surface water use was estimated at slightly less than 7 million acre-feet per year. (Vol. 1, 2002 State Water Plan, p. 47).

Compared to many western states, Texas is in an enviable position because, as a result of unused paper water rights, we have not yet experienced widespread dewatering of rivers and streams.

However, existing authorizations create the potential for large-scale damage to fish and wildlife resources and the associated economic benefits of environmental flows.

- I. **A Formal Reservation System Is A Viable Approach For Formally Setting Aside Unappropriated Water For Environmental Flow Protection.**
 - A. **An open process should be created for issuing certificates of reservation.**
 1. The state would formally reserve from permitting a reasonable amount of water to be made available for fish and wildlife protection and instream human recreation.
 2. Instead of issuing a permit for water for fish and wildlife, the Texas Commission on Environmental Quality (TCEQ) would issue a certificate of reservation for each basin.
 3. The Texas Parks and Wildlife Department (TPWD), in coordination with the Texas Water Development Board, would be responsible for developing reservation recommendations through a public process, with TCEQ making the determination of the amount reserved.
 4. A certificate of reservation would have a priority date and an assigned point (or points) of measurement but it would be subject to future adjustment under limited circumstances.
 - B. **Management Responsibility for the Reserved Water Should Be Assigned to TPWD**
 1. Other than being subject to future adjustment, reserved water would be managed similarly to a water right, based on its priority date.
 2. TPWD, as the state's fish and wildlife agency, is the logical entity to hold the certificates of reservation and to be responsible for ensuring that the priority is honored.
 - C. **Reserved Rights Would Mesh Well into the Existing Water Rights System**
 1. Water rights senior to the reservation would not be affected.
 2. Water rights junior to the reservation would be required to honor the reservation just as they would a senior water right.
 3. Permits junior to the reservation would not be subject to the imposition of environmental flow permit conditions, except as necessary to protect water quality.
 4. Planning would be facilitated because of increased certainty.

II. A State-funded Acquisition Program Could Facilitate The Conversion of Existing Consumptive Rights To Environmental Flow Protection.

A. TPWD should be funded to establish an acquisition program.

1. Water rights would be acquired (through permanent transfers, leases and dry-year options, as appropriate) from willing sellers, with the focus on priority areas where water rights reservations would be inadequate to meet environmental flow needs.
 - a. Regional water planning groups could help in identifying priority acquisition areas based on local knowledge and preferences.
 - b. Regional water planning groups also should be consulted in ensuring that acquisitions are not inconsistent with regional planning priorities.
2. A reliable funding source would be required in order to establish a meaningful acquisition program.
 - a. To be viable, such a program must not compete with acquisition programs for parkland or wildlife management areas.
 - b. Prompt action, supported by adequate funding, is needed to take advantage of what could be limited window of opportunity.

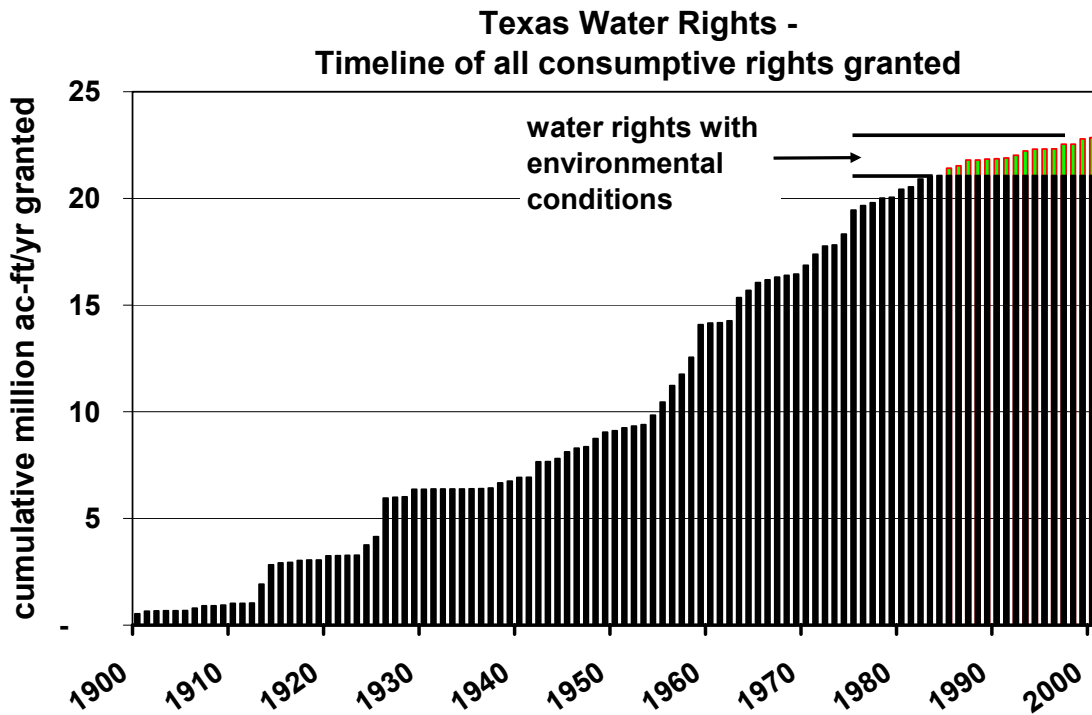
B. TPWD also should receive funding to work with private interests to encourage and facilitate the conversion or donation of existing water rights for environmental flow protection.

1. With sufficient support and assistance, some holders of unused water rights likely would be well-served by converting some or all of those rights to environmental flow protection.
2. TPWD could build on its current successful track record in working with private landowners on wildlife management issues to assist interested water rights holders in converting rights to environmental protection.

C. The state should consider creating an independent, non-profit entity, perhaps through conversion of the Texas Water Trust, that could accept grants and that could qualify donated water rights for tax deductions.

III. Conditions To Protect Environmental Flows Should Be Incorporated When Amendments Are Authorized For Existing, But Unperfected, Water Rights.

- A. Most existing water right authorizations were issued long before conditions were included to protect environmental flows.**
- B. As noted above, unused water rights represent a significant water resource.**
- C. When an amended authorization for use of state water is sought in circumstances where the existing authorization has not been shown to be perfected by prior use, the state should condition the amended authorization on compliance with reasonable conditions to protect environmental flows.**
 - 1. Very minor amendments need not trigger new conditions.
 - 2. As appropriate, exceptions should be made for rights specifically acquired for long-term municipal water supply purposes.
 - 3. The addition of conditions would not be necessary where existing protections for environmental flows were adequate.



Source: data from Texas Commission on Environmental Quality.

