

## Texas struggles to find water for healthy rivers and bays

By Matthew Tresaugue, Houston Chronicle

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A Texas repository of water rights donated for the benefit of fish and wildlife habitat and other environmental needs has had only two deposits since state lawmakers established the program 15 years ago.

The [Texas Water Trust](#), in fact, has not seen a deposit since 2006 - a troubling sign for those who view the program as a way to preserve flows in rivers, such as the Trinity, where little or no water remains unclaimed.

Observers say the state-managed program is languishing because of a passive approach to acquiring water rights. Texas, unlike some other states, does not purchase rights, opting instead to wait for donations.

"It's challenging to find landowners who are just willing to donate rights," said [Andrew Sansom](#), executive director of the [River Systems Institute](#) at [Texas State University](#). "It's going to take grants to create transactions."

Sansom and others want state lawmakers to establish a fund, possibly from fines paid by water polluters, to purchase rights for the protection of rivers and the coastal estuaries they feed with fresh water. One source could be the money BP set aside for early Gulf Coast restoration after the Macondo oil spill in 2010.

The Texas office of the Nature Conservancy, for one, has requested \$250 million from the BP fund to acquire water rights to aid the critically endangered whooping crane. Reduced flows in the Guadalupe and San Antonio river basins in recent dry years have made the estuary too salty for blue crabs, the bird's primary food source.

"The history of the water trust shows that as an unfunded mechanism, it is not going very far because Texans know the value of water rights," said [Laura Huffman](#), director of the Nature Conservancy of Texas. "This would create a revenue stream to test if the market is there to purchase them."

### ***Market-based method***

The new funding calls recognize a stark reality: Texas has allocated every drop of water in 12 of its 15 river basins to cities, companies and farmers.

State law requires some of the available water to be set aside for healthy rivers, bay and estuaries, but does not authorize the [Texas Commission on Environmental Quality](#) to grant new water rights solely for the purpose of preserving flows. The TCEQ may amend existing rights to dedicate water for environmental needs.

"The real challenge is finding the water when it is already allocated," said [Ronald Kaiser](#), professor of water law and policy at Texas A&M University, who supports a market-based approach. "We can't have rivers go dry."

So far, the trust holds little more than a drop in the bucket, relative to the state's needs for so-called environmental flows.

A Hudspeth County rancher donated 1,236 acre-feet of water in 2003 to aid a stretch of the Rio Grande between El Paso and Big Bend National Park. An acre-foot is roughly enough to keep two homes supplied with water for a year.

The second deposit came in 2006, when Texas State University, located at the headwaters of the San Marcos River, gifted 33,108 acre-feet.

[Matt Nelson](#), who manages the trust for the [Texas Water Development Board](#), said he receives a few calls a month from people interested in the program, but does not know why they do not make donations.

The rules, he said, are intentionally broad to encourage deposits. For example, the water rights holder can decide whether to transfer them for a specified time or in perpetuity.

"I have not heard of any obstacles," Nelson said.

### ***Local trusts***

Some people have opted to donate their rights to smaller, local-based trusts, such as the [San Saba River Trust](#) in rural central Texas.

Donations, however, are a difficult sell, in part, because trusts cannot guarantee the water will be in the rivers during dry times, said [Robert Potts](#), president of the [Dixon Water Foundation](#), which promotes healthy watersheds through land management in Texas.

State law prioritizes water rights by seniority, stating "first in time is first in right." So a gifted right, if considered junior, could be curtailed in dry times.

"Land can be protected in good times and bad," Potts said. "You don't have that with water. If you make a big donation, it might not be there when the river really needs it."

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