



# Water in the 78<sup>th</sup> Legislative Regular Session

## Texas Water Policy Update

August 2003

*This newsletter provides periodic updates on water issues affecting rural Texas. Previously produced by the Texas Center for Policy Studies, its production is now overseen by Environmental Defense, and is made possible through the **Texas Living Water Project** -- a collaborative effort of **National Wildlife Federation**, the **Lone Star Chapter of the Sierra Club**, and **Environmental Defense**. Topics addressed in this issue include water related bills passed out of the 78<sup>th</sup> regular Legislative Session; updates on the regional water planning process; and an overview of important upcoming events. Previous editions of the update covered topics such as the phenomena of water ranching, the protection of freshwater environmental flows, and highlights from the 77<sup>th</sup> Legislative Session. This and previous editions are available electronically at [www.texaswatermatters.org](http://www.texaswatermatters.org). If you would like to be added or removed from this mailing list, please contact us via e-mail at [lbrock@environmentaldefense.org](mailto:lbrock@environmentaldefense.org), by telephone at (512) 478-5161, or by post at Environmental Defense, 44 East Avenue, Suite 304, Austin, Texas 78701.*

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### Water Legislation Overview

Over 9,000 bills and resolutions were filed this past regular session, 1,405 of which passed. Some of the main water-related issues debated during the session included the management of our groundwater resources, strengthening state and local efforts with water conservation, providing funding and research initiatives for desalination, and how the state will address environmental flows within the context of its surface water permitting system. Individual bills are available for review at [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

### Groundwater Management

A flurry of bills were passed to clean up and modify the statutes of individual groundwater conservation districts (GCDs), including such actions as modifying boundaries and elections processes. Five districts were created during this session: Southeast Texas GCD (Jasper and Newton Counties), Kenedy County GCD, Rusk County GCD, Brazoria County GCD, and Upshur County GCD. These districts now must win popular support and survive their local confirmation elections. An additional district, the Middle Trinity GCD in Erath County, was validated.

Unfortunately for many areas of the state, local confirmation elections, which are required for district confirmation, are often unsuccessful due to public misinformation on the purpose and benefits of districts. Misconceptions on the potential use of certain powers, like taxation and eminent domain, have been sufficient to thwart confirmation campaigns on numerous occasions. The recognition of this problem was behind the passage of House Bill 1534, which removed some of the more controversial and misunderstood powers of districts. For instance, districts' ability to buy, sell, transport, and distribute water has been limited. In addition, the power of eminent domain has been limited to property within district boundaries and can only be used when necessary for conservation purposes.

The legislature dissolved one district this session because of its inability to win public confirmation (House Bill 2348). This bill, pertaining to the Southeast Trinity Groundwater Conservation District in **Comal County**, was introduced at the request of the district, after the failure of two confirmation elections. Despite the lack of popular support, Comal County, with its booming population and increasing pressure on its groundwater resources, needs a district. Because the county is located within a **Priority Groundwater Management Area**, the Texas Commission on Environmental Quality (TCEQ) now has the opportunity and responsibility to create a district.

#### Priority Groundwater Management Area

A designated area that is experiencing or is expected to experience critical groundwater problems including shortages, subsidence, or contamination within the next 25 years.

There were also a few bills that were broad in focus and may affect many districts across the state.

- In regard to the regulation of spacing and well production, the statute (Texas Water Code Chapter 36) now explicitly outlines a district's ability to adopt different rules for different hydrologic or geographic areas within its boundaries. (Senate Bill 1639)
- For property being condemned for the purpose of developing the groundwater beneath it for a public water supply, evidence must now be submitted on the market value of the groundwater, in addition to the value of the land. (House Bill 803)
- For less populated districts (under 50,000 residents), a person will now be able to serve as the district director in addition to holding an office or employment with another political subdivision (for example the School Board). This will help districts that have a hard time finding qualified directors who aren't already actively involved in the community. (House Bill 1065)

**Conservation Measures**

Representative Robert Puente from San Antonio led the effort this session to address some of the more pressing issues concerning water conservation. The results of this effort will greatly enhance the role of water conservation in meeting future water needs of this state. Here is a general overview of some of these advancements.

**Pre-Session**

**Post-Session**

<p>All entities applying for a new surface water right and cities, industries, etc., which already hold a water permit for 1,000 acre-feet or more (10,000 acre-feet for irrigators) must have a <b>Water Conservation Plan</b> in place. These plans help to ensure that the entity conserves and avoids wasting surface water resources. In addition, all public water suppliers and irrigation districts must develop <b>Drought Contingency Plans</b> which aide in planning for the effects that drought will have on the use, allocation, and conservation of water.</p>	<p>→</p>	<p>Beginning in May 2005, all Water Conservation Plans must include <b>5 and 10-year water saving targets</b> (House Bill 2660). By that same deadline, Drought Contingency Plans will have to include targets for <b>water-use reductions during water shortages and droughts</b> (House Bill 2663). It will be the responsibility of the TCEQ and the Texas Water Development Board (TWDB) to set target goals to use as guidelines in developing these plans.</p>
<p>“Graywater” is defined as household wastewater from washing machines, showers, bathtubs, hand-washing lavatories, and sinks.</p>	<p>→</p>	<p>TCEQ must establish minimum standards for the use of graywater by June 2004. The law also provides that a permit will not be required for domestic use of graywater when it amounts to less than 400 gallons a day. (House Bill 2661)</p>
<p>The American Water Works Association, the trade organization of the drinking water industry, recommends a goal of 10 percent for “unaccounted-for water” i.e. water losses due to leaks, water theft, etc.</p>	<p>→</p>	<p>Retail water utilities are now required to file audits every five years on water losses within their systems. (House Bill 3338)</p>

**What’s New?**

<p>Nonprofit water supply and sewer services corporations now have the authority to establish and enforce water conservation practices and prohibit wasteful uses of potable water. (House Bill 1152)</p>
<p>Homeowner associations are now prohibited from undermining property owner’s efforts to implement conservation related activities such as composting, harvesting rainwater or using water efficient turf grass. (House Bill 645)</p>

A bill by Senator Robert Duncan (Senate Bill 1094) created the **Water Conservation Implementation Task Force**. Members will include representatives from state and federal agencies and a wide variety of water-related interest groups. Under the direction of the TWDB, the group’s mission is to review, evaluate and recommend optimum levels of water use efficiency and conservation for the state. A few of the specific charges include identifying Best Management Practices (BMPs) for municipal, industrial, and agricultural water uses; evaluating the implementation of water conservation strategies recommended through the regional water planning process; and establishing per capita water use targets and goals that take climate and demographics into account. More information about the Task Force can be found on the TWDB website at [www.twdb.state.tx.us](http://www.twdb.state.tx.us).

Lastly, Senate Bill 1053, also by Senator Duncan, created the Agricultural Water Conservation Fund. This fund consolidates three pre-existing agricultural financial assistance programs in an effort to streamline the state’s agricultural loan program and give the TWDB greater funding flexibility to help address the needs of irrigated agriculture in the state.

## **Surface Water Permits and Environmental Flows**

How the state is going to address environmental flow needs has been a subject of much debate and this legislative session was no exception. These flows are essential to supporting fish and wildlife populations in our rivers and help maintain healthy and productive coastal bays and estuaries. During the final hours of the session, a bill that empowered groundwater conservation districts to effectively manage multiple aquifers within their jurisdiction was amended to include unrelated provisions dealing with environmental flows. Senate Bill 1639 was amended to establish a 15-member study commission that will provide recommendations to the next regular session of the legislature (2005) on how to ensure ecological soundness of parks, game preserves and bay and estuary systems in the water permitting process. In the meantime, a two-year moratorium was placed on the issuance of new surface water permits by the TCEQ for environmental flows. Some of the areas with pending applications for environmental flows that could be affected by this moratorium include Caddo Lake in East Texas, Matagorda and Galveston Bays, the Colorado River, the Guadalupe River, and the Lavaca-Navidad River system. The moratorium does not affect permit applications for other uses. This fact has many worried that there will be an increase in consumptive water use permit applications over the interim, thereby further limiting water available to meet environmental flow needs.

For those keeping up with the status of the San Marcos River Foundation's permit application for inflows to San Antonio Bay, it is now tied up in the court system. For more information about the application, visit SMRF's website at [www.sanmarcosriver.org](http://www.sanmarcosriver.org).

## **Desalination**

While desalination is not a new technology, it has garnered a lot of recent interest in Texas. Basically, desalination is any technique that can be used to reduce salts from seawater, surface water, or brackish groundwater. In the spring of 2002, Governor Perry announced a new "desalination initiative." This initiative called for the development of a large-scale seawater desalination demonstration project. The state is now considering proposals for three prospective sites along the Gulf Coast including Freeport, Corpus Christi, and the city of Brownsville. While holding the promise of a seemingly endless supply of water, desalination has its drawbacks and these should always be considered in evaluating desalination as a potential water management strategy. For example, potential drawbacks to seawater desalination include its energy-intensive technology, and the possible environmental impacts associated with the disposal of the brine byproducts.

The desalination of **brackish groundwater** is already occurring around the state. In fact there are currently 100 groundwater desalination plants in Texas that produce a total of approximately 44,800 acre-feet per day of water. While desalination of brackish groundwater can be a viable solution in some situations, the potential problems with desalination of brackish groundwater are the same as with seawater. The process shares the high costs and energy involved, and the issue of brine disposal is still present. In addition, attention must be paid to the impact of brackish water withdrawals on other aquifer resources such as springs and freshwater withdrawals.

Brackish groundwater is defined as groundwater containing elevated levels – between 1,000 and 10,000 milligrams per liter - of total dissolved solids. In comparison, seawater generally has levels above 20,000 milligrams per liter.

It was evident at the capitol that Texas lawmakers are interested in desalination. In a show of support of it as a viable water supply option, the legislature directed the TWDB to further the development of seawater desalination through research, federal funding and other means (House Bill 1370); it added language to the statutes to explicitly state that the Texas Railroad Commission can issue a permit for brine disposal into underground injection wells (House Bill 2567); and it gave the TWDB appropriations up to \$1.5 million in the next fiscal year for desalination grants.

For more information about the state's desalination efforts, visit the TWDB website at [www.twdb.state.tx.us](http://www.twdb.state.tx.us).

And lastly, thanks to Senate Bill 155, starting January 2004, motor vehicles will be prohibited from operating within Texas rivers and streams, with the exception of the Canadian and Red Rivers. There are a few other exemptions to the prohibitions. For example the prohibition doesn't apply to public or private road crossings, and vehicular traffic access is allowed for some business and safety reasons. The bill also provides for the development of local plans to be drafted by municipalities, counties, or river authorities to establish limited access. The Texas Parks and Wildlife Department will be the state agency overseeing these efforts. For additional information, please contact Melissa Parker at (512) 389-4589 or via e-mail at [melissa.parker@tpwd.state.tx.us](mailto:melissa.parker@tpwd.state.tx.us).

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## Regional Water Planning Process Update

The next planning cycle, with the drafts of the regional plans due to the TWDB in the summer of 2005, is well underway. The Regional Water Planning Groups (RWPGs) and the TWDB came to agreement this spring on population projections for all the regions, and the groups are now finalizing their water demand projections. All RWPG meetings are open to the public. Meeting times and locations are posted on the TWDB website at [www.twdb.state.tx.us/RWPG/group\\_info.htm](http://www.twdb.state.tx.us/RWPG/group_info.htm).

Two reports published recently by Environmental Defense should be useful tools for regional water planners and those working and/or interested in water resources.

- “**Economic Principles for Sound Water Planning**” provides an introduction and guide to the use of sound economic principles in water planning. Following these principles can assist planners both in the process of accurately forecasting future water demand, and the evaluation and selection of projects to meet that demand.
- “**Brush Management: Myths and Facts**” is designed to provide information to policy makers, landowners, and interested citizens about what recent field studies have shown regarding the effectiveness of using brush clearing to augment water supplies and the potential environmental impacts of the activity. The report also contains recommendations for managing brush in an environmentally responsible way, maximizing the potential for generating available water, and improving wildlife habitat and grazing conditions for livestock.

Electronic copies of both reports are available online at [www.texaswatermatters.org](http://www.texaswatermatters.org). Contact Laura Brock at [lbrock@environmentaldefense.org](mailto:lbrock@environmentaldefense.org) or (512) 478-5161 for a printed copy.

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## What's Coming Up

- The Lone Star Chapter of the Sierra Club is hosting their “Water for People and the Environment” fall regional conferences series. This year, the series will take place in Houston on September 27<sup>th</sup>, Dallas on October 4<sup>th</sup>, New Braunfels on October 11<sup>th</sup>, and finally in Midland on October 25<sup>th</sup>. For conference agendas and registration information, visit the Sierra Club website at [texas.sierraclub.org](http://texas.sierraclub.org).



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