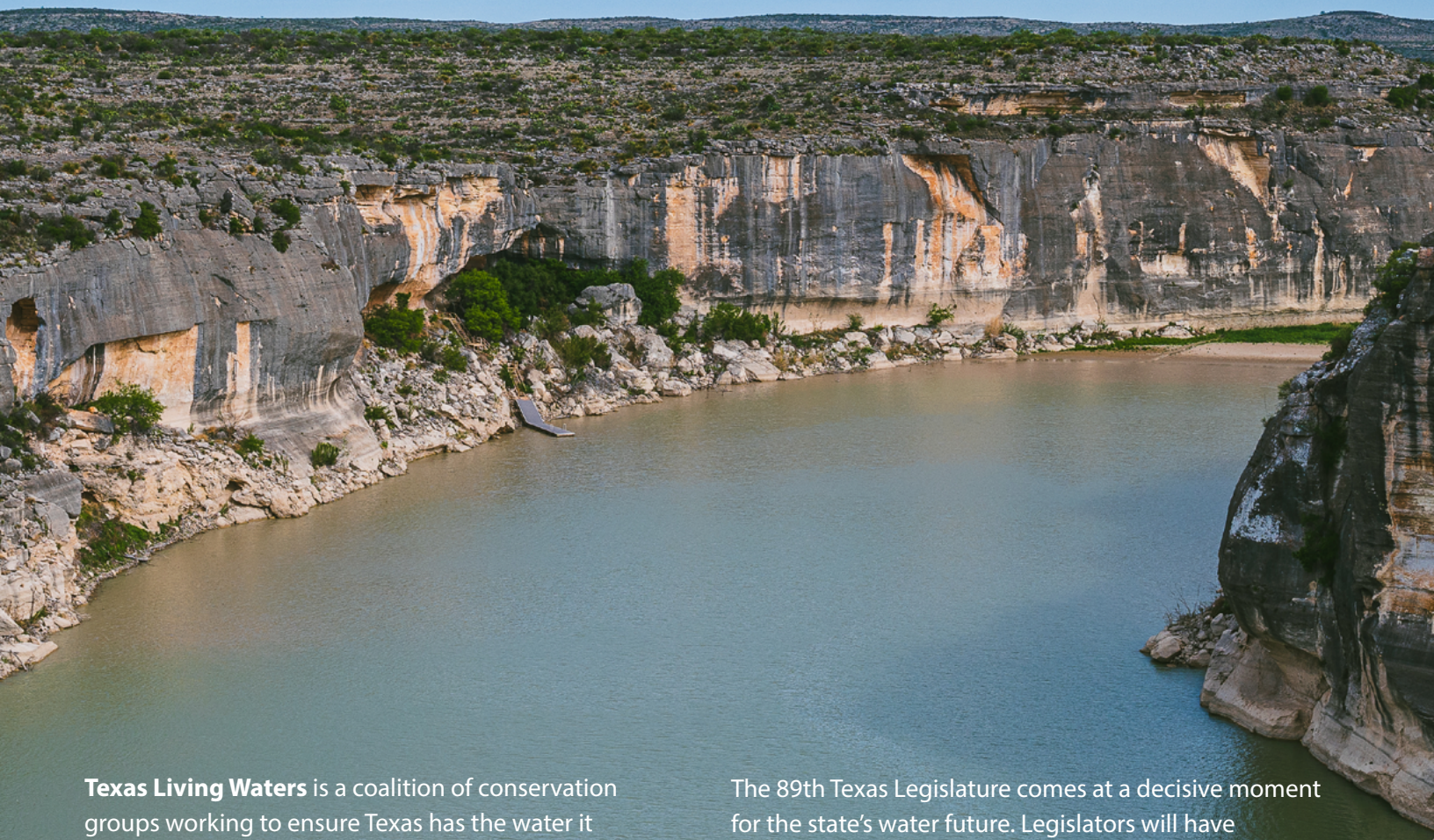
TEXAS LIVING WATERS

POLICY PRIORITIES FOR THE 89TH TEXAS LEGISLATURE AND BEYOND



Texas Living Waters is a coalition of conservation groups working to ensure Texas has the water it needs for thriving communities and abundant fish and wildlife. Texas' rapid growth is driving increased demand for water, highlighting the need for proactive solutions to ensure long-term resilience. In addition to new water supply strategies being pursued to meet the demand of our growing population, the aging and deterioration of existing infrastructure in communities across Texas is causing or exacerbating water loss, boil water notices, and a need for expensive repair or replacement projects in communities where affordability is often already a concern.

The 89th Texas Legislature comes at a decisive moment for the state's water future. Legislators will have the opportunity to secure and build upon positive outcomes from prior sessions while considering new legislation and investments of state resources. From water supply to flooding, new supply to leaky pipes, our state's water-related needs are as substantial and complex as one would expect in such a large state. We seek to ensure Texas is equipped to meet these challenges in a manner that maximizes positive outcomes for its people and ecosystems.

NATIONAL WILDLIFE FEDERATION

SIERRA CLUB LONE STAR CHAPTER

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PRIORITIES AT-A-GLANCE

1: Make Additional Significant Investments to Shore Up Texas' Water Supply and Water Infrastructure

1.1 Protect the reliability, longevity, and efficiency of water and wastewater infrastructure with significant funding to support projects and technical assistance.

1.2 Prioritize investment in resilient, durable water supply strategies.

1.3 Ensure responsible deployment of new supply strategies such as seawater desalination and beneficial use of produced water.

1.4 Support conservation of water used in agricultural production by funding the Texas Water Development Board's (TWDB) Agricultural Water Conservation Program.

1.5 Protect vulnerable populations and optimize the use of state funds by funding a needs assessment for the Economically Distressed Areas Program (EDAP).

2: Support Implementation of the State Flood Plan

2.1 Establishing and funding a technical assistance program for floodplain management activities in small, remote, rural, or otherwise socioeconomically disadvantaged communities.

2.2 Clarify county authority to establish and collect drainage fees in unincorporated areas.

2.3 Developing and adopting statewide minimum design standards for infrastructure and buildings to reduce loss of life and property from flooding.

2.4 Updating statewide building codes in a manner that ensures Texas is eligible for all available federal flood mitigation funding.

3: Advance Protections for Texas Waterways to Preserve Texas' Natural Heritage and Safeguard Public Health

3.1 Direct the Texas Commission on Environmental Quality (TCEQ) to update its metrics for evaluating the need for watermaster programs in additional river basins.

3.2 Clarify the TCEQ's role in approving the dedication of water rights to the Texas Water Trust.

3.3 Appropriate funds to continue refining environmental flow protections applicable to the state's streams, rivers, and bays.

3.4 Build on the Legislature's previous investment in TCEQ's Estuary Programs.

3.5 Provide funding to study risks and mitigation solutions for critical water and wastewater infrastructure.

3.6 Direct the TCEQ to update wastewater treatment standards to protect sensitive streams from the adverse effects of nutrient pollution.

3.7 Direct the TCEQ to establish water quality standards related to pre-production plastics.

4: Empower State Agencies to Do Good Work by Approving Thoughtful, Reasonable Appropriation Requests

4.1 Support TWDB's requests related to collection and analysis of groundwater and surface water data to bolster the work of planners and other water professionals.

4.2 Provide TCEQ the resources to modernize its operations and administer important federal funds available to Texas.

4.3 Provide Texas Parks and Wildlife Department resources to support important land and water conservation programs.

Texas Living Waters recommends that the 89th Legislature prioritize the following to advance a resilient water future for Texas.

1: Make Additional Significant Investments to Shore Up Texas' Water Supply and Water Infrastructure

The $1 billion appropriated to the Texas Water Fund for water infrastructure and conservation in the previous session has produced positive outcomes, due in part to the Texas Water Development Board's (TWDB) decision to allocate a substantial portion of the funds to conservation and water loss projects - particularly those in small, rural, and economically disadvantaged communities. The TWDB also used funds for grants to support important projects whose sponsors cannot afford to take on the debt associated with traditional project financing options.

1.1 Protect the reliability, longevity, and efficiency of water and wastewater infrastructure with significant funding to support projects and technical assistance.
Texans endured approximately 3,000 boil water notices in 2023, and our drinking water, wastewater, and flood infrastructure received near-failing grades from the American Society of Civil Engineers in 2021. TWDB financial assistance programs remain dramatically oversubscribed, demonstrating a strong demand for additional funding as communities across the state work to resolve these issues. The first Texas Water Fund appropriation was a step in the right direction, but it was a drop in the bucket: a transformational investment is clearly needed to repair, protect, and optimize our state's infrastructure.

1.2 Prioritize investment in resilient, durable water supply strategies.
Ensuring adequate water supply will become an even greater challenge for Texas as population and economic growth continues to surge and as climate change impacts intensify. Strategies that focus on conservation and efficient water use while ensuring that new water supplies are safe and protective of human health and the environment are among the most viable and cost-effective options to meet water supply needs. The Legislature should prioritize support for these strategies, including:

- **Conservation:** Conservation is a proven, cost-effective strategy to secure Texas' water future. Using water more efficiently must be a fundamental aspect of water resource management if growing communities are to be sustained and ecosystems are to be protected.
- **Water Loss Mitigation:** Texas must make a coordinated statewide effort to maintain the effectiveness and efficiency of distribution infrastructure by addressing water loss. Our state currently loses an estimated 51 gallons of water per service connection each day - enough to meet the annual water needs for El Paso, Fort Worth, Lubbock, Laredo, and Austin combined. Water loss projects received a portion of the funds appropriated to the Texas Water Fund, but more investment is needed to significantly reduce loss statewide. Water loss mitigation programs optimize system efficiency and can delay or eliminate the need for additional water supply.

▼ Texas utilities lose approximately 572,000 acre-feet of water per year. Source: hiddenreservoirs.org

- **Water Reuse:** Water reuse is a water supply strategy that can yield significant additional potable and/or non-potable supplies for Texas communities, thus reducing the need for additional water supplies. Once considered an innovative strategy, reuse is quickly becoming a standard part of Texas' water supply makeup. The State Water Plan projects that 15% of Texas' future water supply will come from water reuse.

- **Aquifer Storage and Recovery (ASR):** ASR allows large volumes of water to be stored without many of the serious liabilities associated with reservoirs, including evaporative loss and controversy over the value of submerged land. Like reuse, ASR is being implemented successfully in a growing number of communities.

1.3 Ensure responsible deployment of new supply strategies such as seawater desalination and beneficial use of produced water.

- Ensure that desalination diversion and discharge facilities are designed to meet state-of-the-art standards and constructed in locations that minimize potential adverse impacts to fish and wildlife resources and recreational or commercial fishing, among other uses, by avoiding Texas' treasured bays and estuaries.

- Provide that discharges associated with desalination of produced water are governed by robust, updated water-quality criteria designed to ensure, through a quantified evaluation of potential impacts, that degradation of water quality will be avoided.

- Incentivize the reuse of produced water in the oil and gas industry. Although studies on potential beneficial uses of produced water are taking place, the most efficient, economically feasible, and logical approach is to offset the oil and gas industry's water demands through expanded reuse.

- The state should also dedicate resources to track data on produced water, including produced water injection data, which will be a critical tool as the use of produced water increases statewide. Publicly available data on the availability and use of produced water will support identification and development of best practices for water resource management.

▲ Houston, Texas.

1.4 Support conservation of water used in agricultural production by funding the Texas Water Development Board's Agricultural Water Conservation Program.
Agriculture is the largest water user group in Texas, and huge conservation savings can be achieved when ag producers implement best practices such as improvements to irrigation infrastructure. The TWDB's Agricultural Water Conservation program is a popular source of funding to make these improvements, and their $15 million request would allow them to continue awarding grants and loans at their current level for another 10 years. This is a modest request compared to the program's potential, and we believe more could easily be utilized particularly if combined with targeted outreach and technical assistance in rural communities.

1.5 Protect vulnerable populations and optimize the use of state funds by funding a needs assessment for the Economically Distressed Areas Program (EDAP).
EDAP provides valuable funding support for projects in communities where infrastructure is failing or nonexistent and economic hardship rules out most loan financing. Over the years, the program has supported a long list of projects that were critical to protecting public health in some of Texas' most resource-strapped communities. However, much has changed since it was first created with a scope limited to colonias located on the US/Mexico border. We support the TWDB's request for a needs assessment to help ensure future EDAP appropriations remain accessible to the communities most in need. Part of this assessment should consider expanded use of outreach, grants and technical assistance for these often underserved communities.

2: Support Implementation of the State Flood Plan

Along with over 4,000 recommended flood risk mitigation solutions, Texas' first State Flood Plan offers legislative recommendations on behalf of the TWDB as well as the state's 15 regional flood planning groups. As existing Flood Infrastructure Fund (FIF) appropriations continue to be spent on implementation of recommended solutions, the Legislature should prioritize consideration of the plan's legislative recommendations, especially:

2.1 Establishing and funding a technical assistance program for floodplain management activities in small, remote, rural, or otherwise socioeconomically disadvantaged communities.

The adoption of the first state flood plan was a historic achievement, but its recommendations must be implemented equitably to achieve their full impact. Special attention to outreach and technical assistance will ensure all Texans stand to benefit from the strategies planned for their region by ensuring their communities have the awareness and resources necessary to participate in the planning process and secure funding.

2.2 Clarify county authority to establish and collect drainage fees in unincorporated areas.

County projects can have a significant flood mitigation benefit, but supporting the cost of these efforts can be difficult without a dedicated revenue source. Water and wastewater projects are typically supported by utility rates; clarification of counties' authority to access similar revenue for drainage projects would trigger the development of life-saving projects across the state.

2.3 Developing and adopting statewide minimum design standards for infrastructure and buildings to reduce loss of life and property from flooding.

Flood impacts are not limited to the coast or areas that experience relatively high rainfall. Establishing statewide standards will provide all Texans with a baseline level of protection that must be considered during the design and construction of new buildings, and can be expanded upon to meet local needs in areas prone to specific types of flooding.

2.4 Updating statewide building codes in a manner that ensures Texas is eligible for all available federal flood mitigation funding.

While Texas communities and state agencies actively pursue the funding made available for flood mitigation activities, Texas' lack of statewide building codes limits our access to some of the important federal assistance being accessed by other states. International codes already exist for the purpose of protecting public health; by adopting these codes, Texas would also gain access to flood mitigation funding offered by the Federal Emergency Management Agency (FEMA).

▲ Top: Flooding in Los Fresnos. Bottom: Flooding on Llano River.

3: Advance Protections for Texas Waterways to Preserve Texas' Natural Heritage and Safeguard Public Health

From the bays and estuaries that dot our Gulf Coast region to the spring-fed streams and rivers of the Hill Country, Texas is home to some of the most unique and biologically significant waters in the nation. Protecting these waters is critical to facilitate economic growth, public health, and recreational opportunities for residents and visitors. The Legislature should take steps to safeguard our waters from harmful contaminants that can be costly and difficult to remove. To promote proper stewardship of this precious resource, the Legislature should:

3.1 Direct the Texas Commission on Environmental Quality (TCEQ) to update its metrics for evaluating the need for watermaster programs in additional river basins.

As water demands increase and droughts worsen, the role of watermaster programs to proactively oversee management of rights to use state-owned surface water is becoming more and more important. Without watermaster programs, there is no real-time oversight of diversions and management of state water. Currently, watermaster programs exist only in some river basins and TCEQ evaluates the need in additional basins based only on past water shortages and controversies. To better position the state to manage future shortages proactively, the Legislature should direct TCEQ to revise its evaluation criteria for establishing new watermaster programs to consider the likelihood of future shortages and the need for improved management to ensure compliance with permit conditions designed to protect flows needed to support the state's fish and wildlife resources.

3.2 Clarify the TCEQ's role in approving the dedication of water rights to the Texas Water Trust.

The Texas Water Trust, established in the Texas Water Code Section 15.7031, holds water rights dedicated for environmental needs. The Legislature should clarify that the TCEQ's approval authority applies only to surface water rights donations and not donations for groundwater rights, since only surface water falls under the TCEQ's regulatory authority, and define an equivalent process for approving donation of groundwater rights.

3.3 Appropriate funds to continue refining environmental flow protections applicable to the state's streams, rivers, and bays.

SB 1397, from the 88th legislative session, set the stage for reactivating the adaptive management component of the environmental flows process established in SB 3, from the 80th legislative session, which is essential to achieving meaningful protection of the state's flow-dependent fish and wildlife resources. To ensure progress on adaptive management, the Legislature should provide specific funding through TWDB to support the work of bay-and-basin-specific expert science teams to make science-based recommendations to refine flow protection. Those recommendations would, in turn, inform recommendations by stakeholder committees and would be considered by the TCEQ.

3.4 Build on the Legislature's previous investment in TCEQ's Estuary Programs.

Two of the 28 estuaries in the National Estuaries Program are located in Texas, indicating the importance of the estuarine environment along the Gulf of Mexico. Additional support for the estuary programs administered by TCEQ will support research, restoration, and protection work performed by the Galveston and Coastal Bend estuary programs.

3.5 Provide funding to study risks and mitigation solutions for critical water and wastewater infrastructure.

As Texas utilities face increasingly frequent and extreme weather, they must be provided with the right resources to weather the storm. A statewide study cataloging the specific risks of highest concern for each regulated utility would support public health by allowing those utilities to plan effectively for events including floods, droughts, and tornado or hurricane impacts.

▼ A flock of white american ibises and egrets fishing in the Galveston bay.

▲ The 100th TexMesonet station was installed at the Edwards Aquifer Authority's Field Research Park in northern Bexar County.

3.6 Seek updated wastewater treatment standards to protect sensitive streams from the adverse effects of nutrient pollution.

The permitting process that determines how and where treated wastewater may be released or utilized for land application is an important tool for protecting sensitive streams as well as the ecosystems and communities that depend on them. Nutrient pollution contributes to algal blooms which disrupt natural ecosystems and leads to high levels of nitrogen and phosphorus which are removed again through expensive treatment processes to render the water potable for downstream populations. To reduce nutrient pollution and protect the affordability of source water treatment for all communities, existing wastewater treatment standards should be re-evaluated with a focus on permitting requirements that protect sensitive streams from the adverse effects of nutrient pollution.

3.7 Direct the TCEQ to establish water quality standards related to pre-production plastics and potentially harmful substances found in produced water.

Pre-production plastics — tiny plastic pellets used in making plastic products — are being released in high volumes from plastics manufacturers and, once released into the environment, spread rapidly in waterways where they persist and cause numerous adverse effects. The Legislature should implement a regulatory approach that ensures those releases are adequately controlled. Likewise, the Legislature should ensure that any produced water discharges are adequately regulated so that constituents are identified and discharge limits adequate to protect water quality in receiving streams are implemented.

4: Empower State Agencies to Do Good Work by Approving Thoughtful, Reasonable Appropriations Requests

Providing state agencies with the resources they need to do a good job is one of the most straightforward and impactful ways for the Legislature to support work on Texas water issues. State agencies with water-related responsibilities have submitted appropriations requests that reflect their expertise and dedication to serving Texans, including:

4.1 Support TWDB's requests related to collection and analysis of groundwater and surface water data to bolster the work of planners and other water professionals.

Water supply planners, developers, and a host of other professionals concerned with water resources rely on data provided by the TWDB. This biennium, the agency is requesting funds to improve the quality and availability of its groundwater and surface water data. TWDB is also working toward statewide coverage by weather stations which will further improve the state's ability to detect, forecast, and monitor weather conditions that affect water resources management, public safety, agricultural efforts, and the economy. These requests include funds to cover the increased cost of doing business as laboratory water quality analysis has become more expensive, as well as funds that were requested but not completely allocated in the previous session. Approval of these requests would constitute a relatively modest investment with a huge

return as population growth and looming shortages place increasing emphasis on the importance of accurate water supply planning based on TWDB data.

4.2 Provide TCEQ the resources to modernize its operations and administer important federal funds available to Texas.

The TCEQ shoulders a wide range of responsibilities and plays a critical, multifaceted role in environmental protection. Its request includes funds to modernize and secure its data for much needed improvements to the Water District Database, which is an important resource used frequently by water districts, state agency staff, and members of the public. The TCEQ is also requesting less than $2 million that would allow the agency to administer over $190 million in funds for projects that improve resiliency, conserve open space, protect against flooding, mitigate damage, restore habitat, conduct research, develop technology, and promote economic development along the Texas coast. Finally, TCEQ is asking for additional staff and monitoring equipment to keep up with new federal water standards and an increase in permitting requests. Approving these requests by the TCEQ would improve public accessibility of important data, keep up with new regulatory responsibilities and increased permitting requirements, and help connect Texas communities with critical funding opportunities by removing administrative barriers.

4.3 Provide Texas Parks and Wildlife Department (TPWD) resources to support important land and water conservation programs.

The TPWD's requests include funds for programs that support land and water conservation. TPWD's programs help protect Texas water by supporting conservation of fisheries and wildlife, including through the execution of important law enforcement functions when necessary. The Legislature should ensure that TPWD has the resources necessary to continue the effective administration of their programs, particularly those with conservation benefits.

CONTACT US:

National Wildlife Federation
Jennifer Walker, Sr. Director, Texas Coast & Water Program
walkerj@nwf.org
Tom Entsminger, Policy Director
entsmingert@nwf.org

Sierra Club – Lone Star Chapter
Cyrus Reed, Conservation Director
cyrus.reed@sierraclub.org
Evgenia Spears, Water Program Coordinator
evgenia.spears@sierraclub.org

The Nature Conservancy
Suzanne Scott, State Director, Texas Chapter
suzanne.scott@tnc.org
Marie Camino, Government Relations Program Manager
marie.camino@tnc.org

Hill Country Alliance
Katherine Romans, Executive Director
katherine@hillcountryalliance.org
Marisa Bruno, Water Program Manager
marisa@hillcountryalliance.org

Galveston Bay Foundation
Bob Stokes, President
bstokes@galvbay.org
Jacob Hupp, Government Affairs and Public Policy Manager
jhupp@galvbay.org

Bayou City Waterkeeper
Guadalupe Fernandez, Policy & Partnerships Manager
guadalupe@bayoucitywaterkeeper.org
Usman Mahmood, Policy Analyst
usman@bayoucitywaterkeeper.org

Media Inquiries
Suzanne King, Communications Manager
kings@nwf.org
512-610-7752

Learn more at:
texaslivingwaters.org

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