

Policy Priorities for the 88th Texas Legislature and Beyond



The Texas Living Waters Project is a coalition of conservation groups working to ensure Texas has the water it needs for thriving communities and abundant fish and wildlife. Texas is among the fastest-growing states in the country; that growth combined with the impacts of a changing climate are putting a strain on the state's limited water resources. We seek to equip the state to meet these challenges for the people and ecosystems of Texas.

The 88th Legislative Session of Texas comes at a decisive moment for the state's water future. Our water infrastructure is aging and ill-equipped to deal with the rapid rise in population.

Development over aquifers and wetlands threatens our water supply and natural flood protection. Climate change continues to intensify drought, floods, and heat. We call on the Legislature to seize the momentum and become water champions for Texas by: 1) investing in our water infrastructure, 2) addressing water loss, 3) strengthening the role of state agencies in protecting our water resources, 4) enhancing Texas' resilience to drought and flooding, and 5) preserving Texas' natural heritage by prioritizing protection of waterways.

We call on our elected officials to advance this vision and ensure all of Texas has the water it needs to thrive.



To advance a resilient water future for Texas, the Texas Living Waters Project recommends that the 88th Texas Legislature prioritize the following:

1. Make significant investments to shore up Texas' water infrastructure

Texas' water infrastructure is fragile. The state averaged at least seven boil water notices per day in 2022. Our drinking water, wastewater, and flood infrastructure received near-failing grades from the American Society of Civil Engineers in 2021. In order to address these issues and others, the Texas Water Development Board (TWDB) estimates in the 2022 State Water Plan that new water infrastructure will require \$80 billion in capital costs over the next 50 years — 47 billion of that is expected to come from state financial programs. It's past time to invest in our water systems.

The Infrastructure Investment and Jobs Act (IIJA) authorizes an historic federal investment of \$2.9 billion in Texas' water infrastructure over 5 years, primarily in Clean Water and Drinking Water State Revolving Fund programs administered by the Texas Water Development Board (TWDB). Texas needs to draw down every federal dollar available for infrastructure upgrades, particularly in its most disadvantaged and underserved urban and rural communities.

1.1 To ensure Texas communities can take advantage of the opportunity to leverage federal funds during the next biennium, the Legislature should appropriate \$125 million to TWDB for IIJA state match in fiscal years 2024 and 2025.

In response to devastating flooding from Hurricane Harvey, the Legislature passed Senate Bills 7 and 8 in 2019, establishing the Flood Infrastructure Fund (FIF) and the state and regional flood planning process, both administered by TWDB. FIF, initially funded through \$793 million in rainy day funds, provides grants and loans for drainage, flood mitigation, and flood control projects. Once the State Flood Plan is adopted in 2024, FIF will be limited to projects included in the plan. Initial FIF funds are anticipated to be almost fully committed in 2023.

1.2 To ensure Texas can continue to make important investments in flood protection for communities, the Legislature should replenish FIF by appropriating at least \$394.4 million to TWDB.

For more than 30 years, the Economically Distressed Areas Program (EDAP) has enabled underserved communities to secure potable water and wastewater services, while also requiring model subdivision rules to prevent future substandard development.

1.3 To ensure underserved communities can continue to benefit from EDAP, the Legislature should appropriate \$5.3 million of general revenue funds, enabling TWDB to pay off debt in order to issue the remaining \$100 million of EDAP funds. The Legislature should also expand EDAP eligibility to include residential drainage projects, a key need in underserved communities.

The Water Conservation Advisory Council, established by the 80th Legislature via SB 3 and HB 4, administered by TWDB with membership representing designated interest groups, provides Texas' executive and legislative branches of government, political subdivisions, and the public with vast expertise in water conservation – one of Texas' most feasible and affordable pathway to a secure water future.

1.4 To ensure the implementation of important water conservation strategies as recommended by the Council, the Legislature should replenish the Agricultural Water Conservation Grant Program funding to support the grant and loan program for the next 10 years, appropriate funding to implement a statewide water conservation public awareness program, and provide TWDB with authority and resources to incorporate the existing statewide evapotranspiration network into the Texas Mesonet Program.

Below: Texas averaged seven boil water notices per day in 2022.



2. Address water loss as a water supply strategy for Texas

Texas urgently needs to address water loss. Texas utilities are losing about 572,000 acre-feet per year – about 51 gallons of water per service connection every day (g/c/d). Those total losses represent the total annual municipal needs of Austin, Fort Worth, El Paso, Laredo, and Lubbock combined. The state's population is growing at an unprecedented rate and increasing climate extremes threaten longer and deeper drought periods. To have sufficient water to meet the needs of both our communities and the environment, efficient use of all of Texas water resources must be prioritized.

To better enable utilities to mitigate water loss, the Legislature should direct TWDB to:

- 2.1 Place a short-term priority on utilities with above-average water losses for financial investments; and
- 2.2 Provide a report to the Legislature every 5 years detailing: (1) information on the total volume and g/c/d of water loss incurred by water utilities, (2) how TWDB is assisting utilities in mitigating water loss, (3) financial assistance from TWDB to mitigate water loss, and (4) recommendations for additional state action to curb water loss.

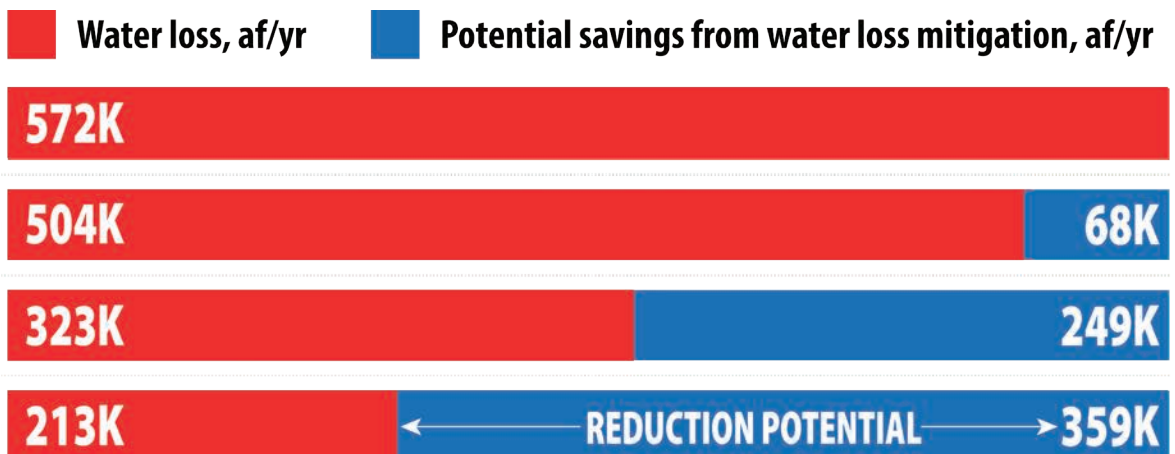
Additionally, to ensure TWDB can place greater emphasis on water loss and prioritize data accuracy, technical assistance for utilities, and water conservation outreach, the Legislature should:

- 2.3 Approve and appropriate funds for additional TWDB water conservation and water planning staff.



Above: Acoustic leak detection is a cost-effective method of tracing water loss.

More data on water loss at hiddenresevoirs.org





3. Strengthen the role of Texas' natural resource agencies in protecting water resources for the benefit of Texas' communities and wildlife

Roughly every 12 years, the Texas Water Development Board (TWDB) and the Texas Commission on Environmental Quality (TCEQ) undergo a comprehensive review by the Texas Sunset Advisory Commission and the Texas Legislature. In evaluating the agencies' adherence to legislative mandates, the Legislature has the opportunity to improve the tools and resources available to TWDB and TCEQ to manage water and engage with stakeholders and the public, thereby creating opportunities to advance water resource protection.

FOR TWDB, THE LEGISLATURE SHOULD:

- 3.1 Direct the agency to collect and analyze information about its financial assistance applicants and recipients, as well as participants in its outreach to better inform and shape agency activities – especially aimed at increasing access to funding opportunities for disadvantaged communities.
- 3.2 Direct the agency to develop an outreach plan to more efficiently promote agency programs, improve operations, and ensure its outreach efforts meet entities' needs and expectations.
- 3.3 Direct the agency and Regional Water Planning Groups to consult with the State Climatologist in the preparation of state and regional water plans to identify regions of the state that are likely to experience severe drought or excessive rainfall.
- 3.4 Fund the 2007 SB 3 environmental flows adaptive management process to support the work of Bay and Basin Expert Science Teams and other qualified entities to identify appropriate refinements to environmental flow standards, set asides, affirmative strategies, and work plans.

FOR TCEQ, THE LEGISLATURE SHOULD:

- 3.5 Refine the 2007 SB 3 environmental flows process by continuing the Basin and Bay Area Stakeholder Committees and Bay and Basin Expert Science Teams, directing the creation of an advisory group of experts on environmental flows management to advise the Environmental Flows Advisory Group on improved approaches for the administration and enforcement of water rights, to encourage voluntary conversions of existing water rights to flow protection, and by directing the Science Advisory Committee to compile draft biennial work plans for consideration and adoption by the advisory group.
- 3.6 Restore the ability of state agencies to provide critical input during TCEQ contested case hearings to ensure informed decisions by the commissioners on issues affecting public lands and fish and wildlife resources while retaining the limitation on challenges by state agencies of TCEQ's final decisions.

4. Enhance Texas' resilience to water-related natural hazards exacerbated by climate change and rapid growth

Whether we are prepared for it or not, the climate in Texas is changing. Over the next few decades, Texas is expected to see increasingly severe storms and summers that are likely to become hotter and drier. These conditions will put our water systems to the test and will require careful planning and investments to adapt to and mitigate for new conditions.

Our state agencies are charged with carrying out important planning for our future. It is critical for these agencies to understand how climate change will impact our state in order to plan for these future conditions.

4.1 To help facilitate state planning that takes Texas' future climate into consideration, the Legislature should require the State Climatologist to develop a report on end-of-century projections in weather, water availability, and climate variability across the state; and require the State Climatologist to consult with state agencies on how to incorporate report findings into their plans.

Texas watermaster areas provide regional oversight of surface water administration by ensuring water users adhere to their priority position and increasingly complex permit special conditions. In cases where water scarcity is creating conflict, watermasters have been used to broker conflict resolution, a design principle for managing common pool resources.

4.2 To ensure better-informed management of water rights, the Legislature should direct TCEQ to appoint a watermaster for each basin that lacks a watermaster program unless it is demonstrated that such a program would not be beneficial to water rights management.

Building codes provide minimum safety standards and construction specifications for new buildings to ensure safe and resilient structures – yet Texas lags behind in establishing up to date codes and counties are left without authority to adopt enforceable codes.

4.3 To ensure maximum protection of communities from the impacts of flooding, and the ability to pursue significant federal funding resources, the Legislature should update state building codes by adopting the 2021 International Residential and Building Codes or equivalent standards, and grant counties the authority to adopt, implement and enforce building code standards.

The Hill Country depends largely on reliable groundwater supplies, but faces critical groundwater problems.

4.4 To protect the water supply and quality of the Hill Country Priority Groundwater Management Area (PGMA), the Legislature should grant Hays, Comal, Kendall, and Blanco counties enhanced authority to protect aquifer recharge, reduce runoff, and add buffer zones between incompatible land uses.

State law currently provides municipalities in Texas the authority to establish drainage utilities and assess drainage fees. This same authority is not currently granted to unincorporated areas of counties. Granting this authority to counties is the most popular legislative recommendation by the Regional Flood Planning Groups.

4.5 To create a direct and reliable source of revenue to assist in the implementation and long-term maintenance and repair of drainage and flood risk reduction projects, the Legislature should provide counties the authority to establish drainage utilities and assess drainage fees.



5. Preserve Texas' natural heritage by prioritizing protection of waterways

Texas is home to some of the most unique and biologically significant waters in the nation. From the bays and estuaries that dot our Gulf Coast region, to the spring-fed streams and rivers of the Hill Country, our backyard is home to tremendous biodiversity found nowhere else on earth. The health of these waters fuels our economy, provides recreation, and protects our communities. We need to ensure that these bodies are properly cared for.

The water quality of Texas' sensitive Hill Country rivers and streams can be negatively impacted through wastewater discharge.

5.1 To protect the water quality of pristine rivers and streams – those with undetectable levels of background phosphorus – the Legislature should seek ways to incentivize alternatives to direct discharge in the watersheds surrounding pristine streams, and enhance TCEQ permitting requirements to ensure effluent matches background levels of phosphorus in stream segments qualifying as pristine.

Land and water conservation plays a critical role not only in protecting communities from natural disasters, but also by bolstering the economy through job creation, providing indispensable outdoor recreation opportunities, preserving Texas heritage, and providing a positive quality of life for Texans.

5.2 To ensure that Texas' rivers and bays have the freshwater needed to support wildlife, communities, the economy, and Texas' vast coastal ecosystem, the Legislature should establish and fund a new statewide program to support nature-based projects benefiting water resources, including aquifer recharge protection, voluntary land protection for water resource conservation, voluntary dedication of water rights and permit allocations to maintain or improve instream flows through the Texas Water Trust and other functions, spring flow enhancement, restoration and habitat improvements across the state.



PRIORITIES AT-A-GLANCE:

1. MAKE SIGNIFICANT INVESTMENTS TO SHORE UP TEXAS' WATER INFRASTRUCTURE

- 1.1 ensure maximum drawdown of federal IIJA funds by appropriating \$125 million to TWDB for state match in fiscal years 2024 and 2025
- 1.2 replenish the Flood Infrastructure Fund by appropriating at least \$394.4 million to TWDB
- 1.3 appropriate general revenue funds for \$5.3 million so TWDB can pay off debt in order to issue the remaining \$100 million in EDAP funds; expand EDAP to allow residential drainage projects to be eligible for EDAP funds
- 1.4 replenish the Agricultural Water Conservation Grant Program funding sufficient to support the grant and loan program for the next ten years; appropriate funding to implement a statewide water conservation public awareness program; provide TWDB with the authority and resources needed to incorporate the existing statewide evapotranspiration network into the existing Texas Mesonet Program

2. ADDRESS WATER LOSS AS A WATER SUPPLY STRATEGY FOR TEXAS

- 2.1 direct TWDB to place a short-term priority on utilities with above-average water losses for financial investments, followed by emphasis on investments in utilities above 75th percentile performance
- 2.2 direct TWDB to provide a report to the Legislature every five years detailing water loss by utilities, TWDB water loss mitigation activities, and recommendations for additional action
- 2.3 appropriate funds for additional TWDB water conservation and water planning staff

3. STRENGTHEN THE ROLE OF TEXAS' NATURAL RESOURCE AGENCIES IN PROTECTING WATER RESOURCES FOR THE BENEFIT OF TEXAS' COMMUNITIES AND WILDLIFE

- 3.1 direct TWDB to collect and analyze information about its financial assistance applicants and recipients, as well as outreach efforts to better inform and more effectively target agency activities – especially as it relates to disadvantaged communities
- 3.2 direct TWDB to develop a coordinated outreach plan to more efficiently promote agency programs, improve operations, and ensure its outreach efforts meet entities' needs and expectations

- 3.3 direct TWDB and Regional Water Planning Groups to consult with the State Climatologist in the preparation of state and regional water plans
- 3.4 provide funding to support implementation of the environmental flows adaptive management process of SB 3 (2007)
- 3.5 refine and ensure the success of the SB3 Environmental Flows process by revitalizing expert and stakeholder advisory committee processes
- 3.6 restore the ability of state agencies to provide critical input during TCEQ contested case hearings

4. ENHANCE TEXAS' RESILIENCE TO WATER-RELATED NATURAL HAZARDS EXACERBATED BY CLIMATE CHANGE AND RAPID GROWTH

- 4.1 require the State Climatologist to develop a report on projected changes in weather, water availability, and climate variability across the state of Texas, and require the State Climatologist to consult with state agencies on how to incorporate report findings into agency strategic planning
- 4.2 direct TCEQ to appoint a watermaster for each basin that lacks a watermaster program
- 4.3 update state building codes by adopting the 2021 International Residential Code and 2021 International Building Code or equivalent standards; provide counties the authority to adopt, implement and enforce building code standards
- 4.4 grant Hays, Comal, Kendall, and Blanco counties enhanced authority to protect aquifer recharge and reduce runoff; buffer zones between incompatible land uses; and to cover the costs of infrastructure improvements and maintenance
- 4.5 provide counties the authority to establish drainage utilities and assess drainage fees

5. PRESERVE TEXAS' NATURAL HERITAGE BY PRIORITIZING PROTECTION OF WATERWAYS

- 5.1 incentivize alternatives to direct discharge in the watersheds surrounding pristine streams; enhance TCEQ permitting requirements to ensure effluent matches background levels of phosphorus in stream segments that qualify as pristine
- 5.2 establish and fund a new program to support nature-based projects that benefit water resources, including dedication of water rights or permit allocations to maintain or improve instream flows, spring flows, and inflows to bays

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