



AGENDA

TWCA Board of Directors Meeting Thursday, March 10, 2020, 10:00am Worthington Hotel, Fort Worth, Texas

1. Call to order – President Kathy Turner Jones
2. Discussion and possible action on approval of minutes of December 3, 2021 board meeting
3. Discussion and possible action on financial reports – Mike Booth, Chair, Finance Committee
4. Report on TWCA Risk Management Fund program and annual meeting – Sonia Lambert, President, TWCA RMF
5. Discussion and possible action on Association Code of Conduct – Kevin Ward
6. Discussion and possible action on 2021 Annual Report – Adeline Fox, Director of Operations & Membership
7. Panel caucus reports and ratification of election of board members
 - Drainage Districts Panel – Stan Kitzman
 - General & Environmental Panel – Carolyn Ahrens
 - Groundwater Panel – Drew Satterwhite
 - Industrial Panel – Glenn Lord
 - Irrigation Panel – Troy Allen
 - Municipal Panel – Wayne Owen
 - Navigation & Flood Control – Emily Rogers
 - River Authorities Panel – Kevin Ward
 - Utilities Districts Panel – Chris Wingert
8. Committee reports with discussion and possible action
 - Bylaws Committee – Emily Rogers
 - TGWA Management Committee – Kathy Turner Jones
 - Surface Water Committee – Lyn Clancy and Walt Sears
 - Groundwater Committee – Brian Sledge and Hope Wells
 - Water Laws Committee – Howard Slobodin
 - Membership & Services Committee – Connie Curtis
 - Endangered Species Committee – Glenn Clingenpeel
 - Federal Affairs Committee – Tom Ray
 - Texas Water Day – Denis Qualls
 - NWRA – Kevin Ward
 - NWC – Tom Ray
 - NWSA – Dan Buhman
 - Water Quality Committee – Randy Palachek
 - Any other committee reports
9. Other business
10. Adjournment (next Board Meeting is Thursday, June 16, 2022 at Kalahari Resort, Round Rock)



MINUTES | TWCA BOARD OF DIRECTORS MEETING
Friday, December 3, 2021, 10:00 am | Omni Austin Downtown

1. Call to Order – President Kathy Turner Jones

President Kathy Turner Jones called the meeting to order 10:03pm with the following people in attendance: Adeline Fox, Lisa Henley, Kathy Turner Jones, Stacey Steinbach, Sarah Kinkle, Scott Hall, Jace Houston, Brian Sledge, Glenn Lord, Alia Vinson, Mark Evans, Mike Turco, Sharon Citino, Ty Embry, Wayne Owens, Ed Shackelford, Bob Lux, Barney Austin, Carolyn Ahrens, Gary Westbrook, Steve Walthour, Chris Gallion, Don Carona, Wade Oliver, Stan Kitzman, Troy Allen, Lauren Kalisek, Larry Patterson, Walt Sears, David Montagne, Denis Qualls, Dan Buhman, Craig Kalkomey, Paulina Williams, Mike Thuss, Heather Cooke, Sam Vaughn, Liz Fazio Hale, Hope Wells, Jonathan Stinson, Jenna Covington, Jim Parks, and Micheon Balmer. **Zoom attendees:** Glenn Jarvis, Drew Satterwhite, Kelley Holcomb, Dirk Aaron, Becky Arledge, Kent Satterwhite, Kim Carroll, Karen Bondy, Connie Curtis, and James Beach.

2. Discussion and possible action on minutes of October 21, 2021 meeting

There were no amendments requested during the meeting. Troy Allen moves, and Steve Walthour seconded the motion to approve minutes of the last board meeting, and the motion passed unanimously.

3. Report on TWCA Risk Management Fund – Sonia Lambert, President, TWCA RMF

Jace reported that the Fund held its strategic planning meeting and board meeting this week. He welcomed the new board member, Jeff Mayfield with NTMWD. The Fund board also selected Derek Boese (SARA) to fill vacancy of Bruce Knott. The Fund hosted several remote learning sessions during COVID including 17 leadership and safety webinars. The Fund is adopting new education efforts and strategies for members. The next meeting will be March 9 in coordination with the TWCA Annual Convention in Fort Worth.

4. Discussion and possible action on 2022 TWCA-TGWA Management Agreement – Stacey Steinbach

Stacey provided background on TGWA and noted the agreement has been in place since the 1970s. TWCA staff is shared with TGWA. This contract is renewed on an annual basis. The recommendation is to approve the contract for 2022. Staff is recommending appointing a committee to explore the management agreement. Gary Westbrook moved, and Mark Evans seconded the motion to approve the 2022 contract and appoint a committee to explore the management agreement, and the motion passed unanimously. Kathy asked that anyone interested in participating contact her.

5. Discussion and possible action on financials, member dues, and proposed 2022 TWCA Annual Budget – Mike Booth, Chair, Finance Committee

Stacey referenced the memo in the packet and noted the inclusion of a 2% annual member dues increase that the board authorized last year. Staff is currently conducting a membership audit including double-checking RMF members. The main highlight is the updated personnel line item. Staff is proposing to hire a sixth employee for TWCA. This staff person would predominately handle TGWA duties. Stacey recognized the members of the finance committee.

Brian Sledge moved, and Wayne Owen seconded the motion to approve financials, member dues, and the 2022 proposed budget, and the motion passed unanimously.

6. Discussion and possible action on Nomination Committee recommendations – Kathy Turner Jones

Kathy recognized the nominations committee members. Hope Wells brought forward the recommendation from the nominations committee which is to nominate Lyn Clancy as the president-elect. Hope Wells moved, and Alia Vinson seconded the motion to nominate Lyn Clancy as the president-elect, and the motion passed unanimously.

7. Discussion and possible action on Policy Committee recommendations – Dan Buhman, Chair

Dan reported that the policy committee took up section 10 in 2021 which deals with environmental issues. Some recommended changes arose within the working group. The changes primarily include adding language to incorporate meaningful stakeholder input. The committee met virtually and recommended amendments to be considered by the board. Dan Buhman moved, and Lauren Kalisek seconded the motion to approve the recommendations brought by the policy committee, and the motion passed unanimously.

8. Reports of Committee Chairs, if necessary (with possible action):

- **Surface Water Committee – Lyn Clancy and Walt Sears**
Walt reported that the Surface Water Committee formed a workgroup to solicit feedback and determine next steps on Issue #2 of TCEQ's Sunset Self-Evaluation Report. To summarize the workgroup's discussion, they wrote a position paper. She asked to authorize TWCA to distribute the position papers – sharing the workgroup's position paper on TCEQ's sunset with sunset and key legislative offices and distributing direct reuse with TCEQ staff. Discussion ensued, and there was a consensus to provide more time for feedback from the board and pushing the vote on this paper to the March meeting or a later electronic vote. There was also discussion of removing the alternative solutions section of the paper. Sarah explained the position paper and provided additional context. Walt Sears moved, and Troy Allen seconded the motion to hold the release of the position paper regarding TCEQ sunset and provide time for more comments by the board, and the motion passed unanimously.

Sarah also provided an update on the direct onsite reuse subcommittee and outlined the materials included in board packets related to rule revisions to encourage direct onsite potable reuse. Liz Fazio Hale moved, and Ty Embrey seconded the motion to authorize staff to distribute the direct onsite position materials, and the motion passed unanimously.

- **Groundwater Committee – Brian Sledge and Hope Wells**
Brian reported that the groundwater committee sent a survey soliciting suggestions for topics to take up during the interim session. The survey will be open longer to solicit additional topics.
- **Endangered Species Committee – Glenn Clingenpeel – no report**
- **Water Laws Committee – Howard Slobodin – Stacey thanked Howard for all his work. The committee filed two amicus briefs in November and secured 5.75 CLE credits at the fall conference. No action required.**
- **Federal Affairs Committee – Tom Ray**

- Texas Water Day – Denis Qualls
Fall Conference had presentation and slides on all issues. On the federal affairs handouts on fall conference web page. Still don't have a specific date for TWD; dependent on DC covid situation.
- NWC – Tom Ray – Sarah reported that NWC is working on flood rehab projects and TRWD - amortize dam rehab – WRDA inclusion.
- NWRA – Kevin Ward – Stacey provided the report. NWRA had their annual meeting. You are a member of NWRA through TWCA membership. Policy meeting in January.
- NWSA – Dan Buhman – Dan provided background on NWSA. Their work is mostly relating to Corps water supply reservoirs. He encouraged people to get involved if interested

- Water Quality Committee – Randy Palachek – no report
- Membership & Services Committee – Connie Curtis – Connie provided an update. Be on the lookout for a webinar in January, annual convention reception, and more.
- Any other committee reports
Stacey provided a brief update on the work of the bylaws committee. They have met twice. Any amendments would be brought to the board and then the full membership.

9. Reports of Panel Chairs, if necessary (with possible action): no reports except as indicated

- Drainage Districts – Stan Kitzman
- General & Enviro. – Carolyn Ahrens
- Groundwater – Drew Satterwhite
- Industrial – Glenn Lord
- Irrigation – Troy Allen
- Municipal – Wayne Owen: Wayne highlighted a draft letter from SAWS on SB3 implementation and issues. Staff will send a copy to the board today. The letter is mainly soliciting additional communication and flexibility from TCEQ. Hope provided some additional information regarding meeting with TCEQ and legislative delegations.
- Navigation & Flood Control – Lyn Clancy
- River Authorities – Kevin Ward
- Utility Districts – Chris Wingert

10. Discussion and possible action on lifetime memberships – Mike Booth

Stacey reported that the board gave authority to the finance committee to vet lifetime memberships. The committee met on November 16 and discussed four nominees. The committee recommends three recipients for 2021: Jim Oliver, CE Williams, Joe B. Cooper. Mike Thuss moved, and Ty Embrey seconded the motion to approve the recommended lifetime memberships, and the motion passed unanimously.

11. Other Business

Adjournment – Next Board Meeting is tentatively scheduled for Thursday, March 10, 2022, at the Worthington Fort Worth. Glenn Lord moved, and Steve Walthour seconded the motion to adjourn at 11:12am.

Texas Water Conservation Association

Balance Sheet As of March 7, 2022

	TOTAL	
	AS OF MAR 7, 2022	AS OF MAR 7, 2021 (PY)
ASSETS		
Current Assets		
Bank Accounts		
1025 Chase - Checking	324,886.42	162,459.16
PayPal Bank	0.00	61,722.94
Savings	31,567.28	
Total Bank Accounts	\$356,453.70	\$224,182.10
Other Current Assets	\$20,439.53	\$16,047.58
Total Current Assets	\$376,893.23	\$240,229.68
Fixed Assets	\$2,807.00	\$2,807.00
Other Assets	\$6,725.28	\$6,725.28
TOTAL ASSETS	\$386,425.51	\$249,761.96
LIABILITIES AND EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable	\$23,871.50	\$23,871.50
Other Current Liabilities		
Direct Deposit Payable	0.00	0.00
Legal Advocacy Fund Deposits	31,556.00	41,556.00
Payroll Liabilities	-366.07	158.14
Total Other Current Liabilities	\$31,189.93	\$41,714.14
Total Current Liabilities	\$55,061.43	\$65,585.64
Total Liabilities	\$55,061.43	\$65,585.64
Equity		
3010 Fund Balance	5,569.03	5,569.03
3015 Fund Balance - Equipment Replace Fund	7,898.00	7,898.00
Retained Earnings	133,450.96	116,863.43
Net Income	184,446.09	53,845.86
Total Equity	\$331,364.08	\$184,176.32
TOTAL LIABILITIES AND EQUITY	\$386,425.51	\$249,761.96

Texas Water Conservation Association

Profit and Loss

January 1 - March 7, 2022

	TOTAL	
	JAN 1 - MAR 7, 2022	JAN 1 - MAR 7, 2021 (PY)
Income		
4000 Membership Dues Income	133,720.00	72,257.00
4110 Legislative News Subscriptions		11,400.00
4200 Annual Convention Income	168,900.00	71,555.00
4240 Other Meeting Income	2,815.00	14,328.00
4250 Fall Conference Income	395.00	
4300 TGWA Management Fee	31,000.00	31,000.00
4500 Risk Management Fund Income	25,500.00	25,000.00
4600 Reimbursable Expense Income	71.57	31.71
Confluence Income	2,999.00	2,500.00
Total Income	\$365,400.57	\$228,071.71
GROSS PROFIT	\$365,400.57	\$228,071.71
Expenses		
5100 Administrative Expenses	3,596.00	2,228.94
5500 Annual Convention	3,509.58	
5530 Mid-Year Conference	300.00	
5550 Fall Conference	300.00	
5650 Travel, Education, and Outreach	1,426.50	3,356.88
5710 NWRA Dues	8,523.25	0.00
5800 Office Expenses and Supplies	6,282.84	6,290.50
5820 Office Lease	22,824.80	22,395.97
6000 IT and Website	7,614.71	6,598.06
Contract Labor		15,000.00
Personnel	126,748.82	118,355.50
Total Expenses	\$181,126.50	\$174,225.85
NET OPERATING INCOME	\$184,274.07	\$53,845.86
Other Income		
4100 Interest Earned	172.02	
Total Other Income	\$172.02	\$0.00
NET OTHER INCOME	\$172.02	\$0.00
NET INCOME	\$184,446.09	\$53,845.86

Texas Water Conservation Association

Budget vs. Actuals: 2022 TWCA Budget - FY22 P&L

January - December 2022

	TOTAL	
	ACTUAL	BUDGET
Income		
4000 Membership Dues Income	133,720.00	407,500.00
4110 Legislative News Subscriptions		34,000.00
4200 Annual Convention Income	168,900.00	225,000.00
4220 Summer Conference Income		165,000.00
4240 Other Meeting Income	2,815.00	32,000.00
4250 Fall Conference Income	395.00	180,000.00
4300 TGWA Management Fee	31,000.00	186,000.00
4500 Risk Management Fund Income	25,500.00	154,500.00
4600 Reimbursable Expense Income	71.57	10,000.00
Confluence Income	2,999.00	12,000.00
Total Income	\$365,400.57	\$1,406,000.00
GROSS PROFIT	\$365,400.57	\$1,406,000.00
Expenses		
5100 Administrative Expenses	3,596.00	15,000.00
5500 Annual Convention	3,509.58	125,000.00
5530 Mid-Year Conference	300.00	82,000.00
5550 Fall Conference	300.00	80,000.00
5570 Other Meetings		26,000.00
5590 Board Expenses		19,000.00
5650 Travel, Education, and Outreach	1,426.50	25,000.00
5710 NWRA Dues	8,523.25	35,000.00
5800 Office Expenses and Supplies	6,282.84	35,000.00
5820 Office Lease	22,824.80	99,000.00
6000 IT and Website	7,614.71	35,000.00
Personnel	126,748.82	830,000.00
Total Expenses	\$181,126.50	\$1,406,000.00
NET OPERATING INCOME	\$184,274.07	\$0.00
Other Income		
4100 Interest Earned	172.02	
Total Other Income	\$172.02	\$0.00
NET OTHER INCOME	\$172.02	\$0.00
NET INCOME	\$184,446.09	\$0.00



ITEM: Discussion and possible action on Association Code of Conduct
DATE: March 10, 2022
BOARD CONTACT: Kevin Ward
STAFF CONTACT: Stacey Steinbach

Background Information:

TWCA is a member of the National Water Resources Association (NWRA) along with 13 other western state water associations. NWRA works at the federal level with its members to promote sustainable water supply for all beneficial uses in an economical and environmentally responsible manner. In 2019, NWRA adopted a Code of Conduct to ensure its board members and conference attendees complied with standard principles related to harassment, intimidation, and behavior at NWRA-hosted events and meetings. The policy, which was vetted by attorneys, is a best practice tool and aligns well with association insurance policies and the internal requirements of most or all TWCA members. We are also working with TWCA Risk Management Fund staff on standard board policy provisions and future opportunities for training.

This year, TWCA Board Member and River Authorities Panel Chair Kevin Ward is President of NWRA. In order to further the principles outlined in the NWRA Code of Conduct and set an example for other statewide associations including the Texas Ground Water Association (TGWA), we recommend the TWCA Board of Directors adopt the policy for its own board and event participants.

A similar draft will be up for approval at the next TGWA board meeting in May 2022.

Recommended Action: Approve the proposed TWCA Code of Conduct, requiring acceptance and compliance by TWCA board members, staff, and event participants.



Code of Conduct

The Texas Water Conservation Association (TWCA) is a non-profit organization with a vision to promote sound water policy for Texas. TWCA members proudly provide water and wastewater service to the vast majority of Texans. In an effort to ensure member safety and the ability to effectively advocate for members, TWCA holds its members, staff, board, volunteers, and sponsors to the highest professional standards.

Member safety is a top priority for TWCA and behavior that is harassing, threatening, demeaning, or discriminatory will not be tolerated. In addition to protecting member safety, appropriate behavior is also critical to safeguard the integrity of TWCA and the role it serves as an advocacy and educational organization. TWCA is judged, in large part, by the individual and collective performance of its members. TWCA members and supporters must act in a manner that merits public trust and confidence.

TWCA is committed to providing an environment that is free from discrimination and harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion, or any other legally protected characteristic will not be tolerated. Unacceptable behaviors include, but are not limited to:

- Harassment, intimidation, or discrimination in any form.
- Physical, written, or verbal abuse of any attendee, speaker, volunteer, exhibitor, staff member, service provider or other meeting guest.
- Actual or threatened violence toward any individual or group.
- Conduct endangering the life, safety, health, or well-being of others.
- Examples of unacceptable behaviors include: verbal comments related to gender, sex, sexual orientation, disability, physical appearance, body size, race, religion, national origin, inappropriate use of nudity and/or sexual images in public spaces or in presentations, threatening or stalking any attendee, speaker, volunteer, exhibitor, staff member, service provider or other meeting guest.

Any TWCA member, conference participant, sponsor, or staff member who violates this Code during the course of a TWCA sponsored event is subject to penalty, up to and including removal from the program and or the Association. TWCA cannot control behavior or actions that occur outside of TWCA events. However, it reserves the right to respond to actions that violate this Code.

By attending a TWCA event participants agree to abide by this TWCA Code of Conduct and understand that they may be removed as a participant if they violate any of these provisions.

Signature

Date

KENT SATTERWHITE
IMMEDIATE PAST PRESIDENT

KATHY TURNER JONES
PRESIDENT

WALT SEARS
PRESIDENT-ELECT
TWCA 2021 Annual Board Meeting
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ITEM: Bylaws Committee Update
DATE: March 10, 2022
BOARD CONTACT: Emily Rogers
STAFF CONTACT: Stacey Steinbach

Background Information: TWCA convened a Bylaws Committee in 2016 to review the Bylaws and add the current provisions related to presidential board appointees and the TWCA Finance Committee, both of which have been successful additions for the Association. Since that time, TWCA has undergone a strategic planning process and has been experiencing some committee overlap between the Executive Committee and Finance Committee. Upon a recommendation from the Finance Committee and approval of the TWCA Board, TWCA President Kathy Turner Jones formed a Bylaws Committee to look at these and other issues. The committee has met twice and come up with a first draft of proposed changes, attached here and outlined below. Due to the short turnaround between final drafting and this meeting, this item is informational only – these changes will be up for approval by the TWCA Board and full membership at the summer conference. The committee continues to discuss issues related to board representation and may include additional changes when bringing the full package up for a vote in June.

Bylaws Committee Members: Emily Rogers (Chair), David Montagne, Sharon Citino, Elizabeth Fazio Hale, Lauren Kalisek, Steve Walthour, Wayne Owen, Glenn Jarvis, Connie Curtis, Troy Allen, Emily Rogers, Kent Satterwhite, Walt Sears, Kathy Turner Jones, Mike Booth, Jonathan Stinson

Goals of the Bylaws Committee

1. Ensure that the Bylaws are consistent with current practices
2. Formalize certain activities
3. Address board participation
4. Ensure the board represents the membership
5. Provide additional opportunities for members to participate in leadership roles

Overview Proposed Bylaws Changes

- Incorporate Non-Substantive Changes/Additions/Clarifications
 - Change “General Manager” to “Executive Director” which is more typical for non-profit associations
 - Incorporate TWCA’s Vision and Mission into the bylaws
 - Vision – To be a trusted resource promoting sound water policy for Texas
 - Mission – To educate members, advocate on water issues, build consensus, and sustain TWCA’s impact and measured growth
 - Update language related to duties of the TWCA secretary related to meeting minutes
 - Update language related to board and staff insurance requirements
 - Provide for consistent terms throughout (board member v. director, for example)
 - Clarify definition of Panels and process for electing the Chair/VP and Vice-Chair of Panels
 - Eliminate a duplicative section
- Formalize Lifetime Membership and Selection Process
 - Clearly define lifetime membership as free membership in the Association
 - Include selection parameters:

- TWCA members who contributed greatly to the association;
 - Who are retired or otherwise no longer employed in the water industry; and
 - Who must be nominated and approved by the TWCA board.
- Require nominations for lifetime memberships to be submitted in writing to staff for consideration by the Executive Committee and recommendation to the board at the December board meeting. The Board may waive “retired or no longer employed.”
- Address Board Participation
 - Require board members to be paying dues members in good standing
 - Define “good standing” as a member who has paid dues, shows up, complies with board policies
 - Institute a requirement that board members may not miss more than 3 board meetings within two calendar years unless additional absences are excused by the Board President.
 - Past presidents will continue to serve on the board as voting members only if they or their employer pay annual membership dues, regardless of any lifetime membership status.
 - If a past president does not meet board requirements (including the paying of dues and attendance), they take on "President Emeritus" status and are no longer voting members of the board.
- Update the Executive Committee
 - To reduce redundancy, the finance committee duties would be assigned to the Executive Committee and the finance committee would be eliminated as a separate committee (though it could be reconstituted as a subcommittee of the Executive Committee).
 - A treasurer would be elected by the board each December to serve on the Executive Committee. The Executive Director would no longer be the secretary-treasurer. Treasurer must be a board member. Term of one fiscal/calendar year (Jan 1 of following year). Nominating committee nominates Treasurer.
 - Executive Committee membership would remain the same with the addition of the Treasurer.
- Define Board, Executive Committee, and Executive Director Authority
 - Address and clarify delegation to and powers of the Executive Committee and Executive Director
 - Executive Committee retains power not retained by Board as noted below
 - The Board of Directors retains the following powers:
 - Hire and fire the Executive Director
 - Approve the Budget and Audit
 - Approve changes to the TWCA Policies
 - Elect Officers of the Association
 - Ratify board member panel chair/vice chair elections from the Panels
 - Approve contracts that exceed the budgeted amount
 - Approve lifetime memberships

Recommended Action: No formal action at this time. Board members are encouraged to closely review the proposed changes and provide any feedback to the committee chair. The committee will continue to work on these and possible additional changes for adoption at the summer conference.

TEXAS WATER CONSERVATION ASSOCIATION BYLAWS

ARTICLE I. NAME AND ADDRESS

- SECTION 1 The name of this Association shall be the **TEXAS WATER CONSERVATION ASSOCIATION**.
- SECTION 2 Headquarters of the Association shall be in the City of Austin, Texas.

ARTICLE II. ~~PURPOSES~~VISION AND MISSION

~~SECTION 1~~ — ~~The purpose of this Association shall be:~~

~~To promote~~SECTION 1 The vision of this Association is to be a trusted resource promoting sound water policy for Texas. The mission of this Association is to educate members, advocate on water issues, build consensus, and sustain the Association's impact and measured growth. To further the Association's vision and mission, the this Association shall:

- a) Promote and support the dedicated task of conserving, developing, protecting, and utilizing the water resources of Texas for all beneficial purposes.
- b) ~~To promote~~Promote and assist in the proper coordination of plans proposed by agencies of the federal, state and local governments, associations, and private enterprise to conserve, develop, protect, and utilize the water resources of the state.
- c) ~~To create~~Create a widespread interest in water resources development and conservation by the citizens of Texas.
- d) ~~To keep~~Keep all members of the Association fully advised on all matters pertaining to or affecting water resources development and conservation in the state. To encourage in all ways possible needed legislation, both state and national, to carry out the Association's objectives.

ARTICLE III. MEMBERSHIP

- SECTION 1 Membership in the Association shall be open to all individuals, organizations, firms, corporations, districts, authorities, cities, towns, and other entities interested in furthering the purposes of the Association. The functions of the Association are financed by the dues of the membership, which are payable annually.

SECTION 2 There shall be six levels of membership in the Association as follows:

- a) Individuals whose occupation is unrelated to the water profession and who are carried on the membership rolls of the Association without designation of firm, company, or organizational affiliation.
- b) Small districts, authorities, and water corporations with up to 3 employees; state agencies, councils of government, and other associations; businesses and industries (other than consultants listed in (c) below) with less than 25 employees; cities with a population of less than 15,000.
- c) Districts, authorities, and water corporations with 4-15 employees; consultants (legal, engineering, financial, utility operations, etc.) with less than 10 employees in Texas; businesses and industry with 26-50 employees in Texas; cities with a population of 15,000-50,000.
- d) Districts, authorities, and water corporations with 16-40 employees; consultants with 11-50 employees in Texas; businesses and industry with 51-100 employees in Texas; cities with a population of 50,000-250,000.
- e) Districts, authorities, and water corporations with 41-100 employees; consultants with over 50 employees in Texas; businesses and industry with 100-500 employees in Texas; cities with a population of 250,000-500,000.
- f) Districts, authorities, and water corporations with over 100 employees; businesses and industry with over 500 employees in Texas; cities with a population greater than 500,000.

SECTION 3 The membership of the Association shall be organized into ~~panels~~Panels according to classification of water use or interest. The ~~panels~~Panels are: (a) Groundwater Panel; (b) Irrigation Panel; (c) Municipal Panel; (d) Industrial Panel; (e) Flood and Navigation Panel; (f) River Authorities Panel; (g) General and Environmental Panel; (h) Utility Districts Panel; and (i) Drainage Districts Panel.

SECTION 4 Membership in ~~each panel~~the Association shall entitle the member to a single vote on matters brought before ~~the a P~~panel for its consideration. To vote, the member must be in good standing in the Association.

SECTION 5 The Board of Directors may nominate and approve honorary lifetime memberships for members who have contributed greatly to the Association and who are retired or otherwise no longer employed in the water industry. Nominations for lifetime membership must be submitted to the Executive Director for consideration by the Executive Committee for recommendation to the Board of Directors at least thirty (30) days before the Board of Directors' fourth quarterly meeting. The Board of Directors may waive by majority vote of the

Board the requirement that the member no longer be employed in the water industry. Members who are lifetime members shall not be required to pay membership dues except as provided by Article 5, Section 9.

SECTION 6 A member is in good standing with the Association if the member has paid its membership dues and has not been deemed in violation of policies of the Association regarding membership as determined by the Executive Committee.

ARTICLE IV. FINANCIAL STRUCTURE

SECTION 1 Funds to carry on the activities of the Association shall be derived from membership dues, giftsevents, contributions, and other sources. Annually, the Board of Directors shall adopt and establish the dues structure for each level of membership in the Association as described in Section 2, Article III.

SECTION 2 All receipts shall be entered in a permanent record and deposited in a FDIC bank in the City of Austin, Texas, to the credit of the Association. All disbursements shall be made only after approval by the General ManagerExecutive Director or his/her designee, and shall be within budget guidelines established by the Board of Directors.

SECTION 3 The fiscal year of the Association shall be the calendar year, January 1st to December 31st, inclusive, of each year.

SECTION 4 Prior to the commencement of each fiscal year, the Board of Directors shall adopt an annual budget for that year which shall remain in effect unless subsequently amended by the Board.

~~SECTION 5 The Association shall have a six member, standing Finance Committee composed of the Immediate Past President, President, President-Elect, and three additional members (one selected by each of the three presidents). The Finance Committee~~

SECTION 5 At the fourth quarterly meeting of the Board, the Board of Directors shall elect a member of the Board of Directors who is in good standing as Treasurer effective January 1 of the following year for a one-year term. The Treasurer shall be an officer of the Association. The Treasurer shall oversee the management of the financial affairs of the Association. The treasurer shall also have such other authority and perform such other duties as may be delegated from time to time by the Board of Directors.

SECTION 6 The Association's Executive Committee, as defined in Article VI, shall: (1) assist with the development of the Association's annual budget; (2) review financials at least quarterly; (3) provide financial reports to the Board of Directors; (4) provide advice and assistance to the General ManagerExecutive Director; and (5) make recommendations to the Board of Directors related to financial matters.

ARTICLE V. BOARD OF DIRECTORS

SECTION 1 The governance of the Association shall be vested in a Board of Directors, the members of which shall be members ~~of the Association,~~ in good standing in the Association, and residents of the State of Texas. The Board shall consist of sixty-nine (69) members plus the Immediate Past President, President, President-Elect, and all other living Past Presidents. Except for the Immediate Past President, President, and President-Elect, whose terms shall be for one year, the terms of office of the members of the Board shall be for three years or until their successors are elected and installed. ~~All other and for so long as they remain in good standing as a Board member.~~ All living Past Presidents shall be lifetime members of the Board so long as they remain members in good standing as a Board member of the Association pursuant to Section 9 of this Article. The President shall preside at all meetings of the Board of Directors and the Executive Committee, and shall serve as the chief executive officer of the Association. Successors to members of the Board whose terms expire shall be chosen annually at the annual meeting of the Association by each Panel listed in Article III, Section 3. ~~panel and shall be composed of representatives from the nine classifications of water uses or interests: (1) Groundwater—seven members; (2) Irrigation—seven members; (3) Municipal—seven members; (4) Industrial—seven members; (5) Navigation & Flood Control—seven members; (6) River Authorities—seven members; (7) General and Environmental—seven members; (8) Utilities Districts—seven members; (9) Drainage Districts—seven members.~~ Upon the commencement of his/her term, the President-Elect shall appoint two additional members to the Board for a three-year term.

SECTION 2 Each ~~water use or interest classification~~ Panel shall elect annually from their members of the Board, one member to serve as Panel Vice President ~~and Panel Chair~~ and one member to serve as Panel Vice-Chair. These ~~nine Vice Presidents~~ individuals shall be without rank or seniority among themselves.

SECTION 3 At the fourth quarterly meeting of the Board, the Board of Directors shall elect any member of the ~~Texas Water Conservation~~ Association who is in good standing as a Board member of the Association, and a resident of the State of Texas as President-Elect effective June 1 of the following year. The President-Elect shall become the President of the Association one year after s/he officially becomes President-Elect. When the President-Elect ~~is chosen from among the director~~ stakes office, the place s/he holds as ~~Director~~ Board member shall be declared vacant and the vacancy shall be filled as provided for in filling other vacancies on the Board.

SECTION 4

SECTION 4 A member of the Board of Directors is in good standing as a Board member if: (1) the Board member, or his or her employer, has paid their current on membership dues; (2) while serving a member of the Board of Directors, the Board member

has not been absent from more than three Board of Director's quarterly meetings in two consecutive calendar years without prior approval by the President; and (3) the Board member is not in violation of any policies of the Association regarding membership as determined by the Board of Directors or Executive Committee.

SECTION 5

The Board of Directors shall determine the policies and programs for the Association's activities and shall adopt rules and regulations for the conduct of its affairs and direct all activities and carry out the objectives of the Association subject to the policies set forth in the resolution organizing this Association, adopted at Austin, Texas, October, 1944. ~~However, as matters comes before the Board, they~~Specifically, the Board of Directors shall (1) employ the Executive Director, (2) approve the Association's annual budgets and audits, (3) adopt policies of the Association or approve changes to the Association's policies, (4) elect the officers of the Association, (5) ratify the election of Board ~~Members of the Panels~~ described in Article VIII, Section 13, and the Executive Committee members; and (6) approve the execution of any contracts that were not approved as part of the budget approval or that exceed the budgeted amount. ~~As matters comes before the Board, those matters~~ may be referred to Committees as directed by the President and/or Board with specific direction as to their charge. It shall be the duty of the officers and ~~Board members~~ directors of the Association to carry out and actively support and defend the policies and programs of the Association.

SECTION 56

The Board of Directors shall employ ~~a General Manager~~an Executive Director of the Association who shall serve at the discretion of the Board. The ~~General Manager~~Executive Director shall be the Executive Officer and Secretary-Treasurer of the Association, and shall have complete charge of the office and records of the Association and be responsible for the prosecution of all its activities. The ~~General Manager~~Executive Director shall devote his/her entire full-time employment to the affairs of the Association ~~and shall furnish surety bond~~ and receive such compensation as the Board of Directors may determine. The ~~premium of the bond of the General Manager~~Executive Director shall ~~be paid out of the funds of the~~ensure that the Association, its Board members, Officers, and employees have insurance coverage as recommended for non-profit associations.

SECTION 67

Thirty-five members of the Board of Directors present at any regular or special meeting shall constitute a quorum for the transaction of such business as may come before it.

SECTION 78

Vacancies occurring from any cause in the officer personnel of the Association shall be filled by election at the next succeeding meeting of the Board of Directors. Except as provided in the next paragraph of this section, vacancies on the Board

of Directors shall be filled by the Board at ~~their-its~~ next succeeding meeting upon nomination made by a ~~Director-Board member~~ representing the ~~classification-of water use or interest~~ Panel in which the vacancy exists. The newly elected Board member ~~Director~~ shall serve the unexpired term of the Board member ~~Director~~ being replaced, subject to confirmation by the ~~group-members~~ present at the succeeding annual Association Panel meeting ~~of the Association representing the particular classification of water use or interest.~~

Any vacancies that occur during the three-year term of one of the six Board member positions appointed by a President-Elect shall be filled by the individual who made that appointment, or in that individual's absence, by the current President.

SECTION ~~89~~ 89 All Past Presidents of the Association are hereby designated as full voting members of the Board of Directors for life so long as they remain members of the Association ~~- and remain in good standing as a member of the Board.~~ As members, they are encouraged to participate in all of the affairs of the Board to the same extent as duly-elected members and shall be entitled to vote on all matters presented to the Board for official action. To be a Board Member in good standing, the Past President or his or her employer must pay the annual membership dues, regardless of any lifetime membership status, and must meet the criteria for Board membership described in Article V, Sections 1 and 4. If a Past President does not meet the requirements described in Article V, Sections 1 and 4 for Board membership, including the payment of the annual membership dues, the Past President shall be designated as "President Emeritus" and shall be a non-voting member of the Board of Directors.

ARTICLE VI. EXECUTIVE COMMITTEE

SECTION 1 The Executive Committee of the Association shall consist of twenty ~~one~~ two members: ~~-, twelvethirteen of whom shall be~~ the Immediate Past President, President, President-Elect, ~~and Treasurer;~~ ~~and the nine Panel Chairs/Vice Presidents;~~ ~~and the nine Panel Vice-Chairs provided for by Section 2 of Article V of these Bylaws.~~ The remaining nine members shall be composed of one member of the Board from each of the nine classifications of water use or interest as set out in Section 4 of Article III of these Bylaws; the respective representative for each classification shall be selected by the members of that classification at the annual meeting of the membership of the Association. Subject ~~Except for the powers reserved for the Board of Directors or delegated to the Executive Director, and subject~~ to the policies and programs of the Association and subject to the policies, rules, and regulations determined by the Board of Directors, the Executive Committee shall direct all activities of the Association. Eleven members shall constitute a quorum for the transaction of business at any meeting.

SECTION 2 The Executive Committee shall submit ~~m~~Minutes of its meetings, including ~~a financial reports of any financial actions,~~ to the next scheduled meeting of the Board of Directors.

ARTICLE VII. OFFICERS

SECTION 1 The President shall preside at the annual meeting of the Association and may call meetings of the Board of Directors or Executive Committee at times and places s/he deems advisable. The President may also assign any duties to the Immediate Past President that s/he deems necessary.

SECTION 2 The President-Elect in the absence of the President shall have all the powers and prerogatives of the President.

SECTION 3 In the absence or failure to act of both the President and President-Elect, any three members of the Executive Committee ~~of the Association~~ shall be empowered to call special meetings of the Board of Directors or the Executive Committee.

SECTION 4 The ~~General Manager~~Executive Director shall record and have preserved the proceedings of all meetings of the Association, Board of Directors, and the Executive Committee; ~~the minutes being entered in a permanently bound record and signed by the General Manager~~Executive Director and ~~presiding officer of the meeting~~. The ~~General Manager~~Executive Director shall keep well informed on all matters pertaining to the development, conservation, control, protection, and utilization of water resources of Texas for all beneficial purposes, and other matters relating to the business of the Association, and from time to time report such matters to the membership of the Association in such manner as the Executive Committee may prescribe, and shall perform such other duties as may be required of him/her by the Board of Directors or the Executive Committee.

ARTICLE VIII. COMMITTEES

SECTION 1 The President shall annually appoint all committees as authorized or directed by the Board of Directors.

SECTION 2 It shall be the function of such committees as are appointed to make necessary investigations and recommendations, reporting same ~~in writing~~ to the Board of Directors. No committee or officer shall represent the Association in favor of, or in opposition to, any matter without the approval of or authority of the Board of Directors in the manner prescribed in ~~Section 4 of~~ Article V, Section 5 of these Bylaws.

ARTICLE IX. MEETINGS

- SECTION 1 The Association shall meet three times per year, at such times and places as may be decided upon by the Board of Directors. One meeting shall be designated as the Annual Meeting, which shall be held in February or March unless otherwise authorized by the Board of Directors.
- SECTION 2 The Association may be called in special meeting at any time or place by the Executive Committee should an emergency arise justifying such meeting.
- SECTION 3 The Board of Directors shall hold four regular meetings at such times and places as may be decided upon by the Board. The annual meeting of the Board shall be one of the Board's regular meetings, and it shall be held at the same time and place as the annual meeting of the Association. Special meetings of the Board may be held at such times and places as may be deemed advisable by the President.
- SECTION 4 Special meetings of the Executive Committee may be called by the President whenever conditions may warrant.

ARTICLE X. ELECTIONS

- SECTION 1 Thirty days before the annual meeting, the ~~General Manager~~Executive Director shall furnish all members of the Association with a list of the members of the Board of Directors whose terms of office will expire at such annual meeting.
- SECTION 2 Except for the Board members appointed by the President-Elect, at the annual meeting, the members of the Association present ~~representing the respective classifications of water use or interest set forth in Section 4 of Article III~~at each Panel meeting shall hold separate caucuses ~~according to said classification~~ and elect a member of the Board of Directors for each expired term as provided in Section 1 of Article V. Any member of the Association who is ~~a resident of the State of Texas and whose current annual dues are paid in good standing with the Association~~ shall be eligible for election or appointment as a member of the Board of Directors.

ARTICLE XI. AMENDMENTS

SECTION 1 Proposed amendments to these Bylaws may be considered at any regular or special meeting of the Board of Directors, provided the ~~Directors~~Board members have been furnished copies of the proposed amendments not less than 10 days prior to the meeting. Proposed amendments must receive the affirmative vote of two-thirds of the members of the Board of Directors present and voting, and a majority vote of the membership present and voting at a subsequent meeting of the Association.

ARTICLE XI. AMENDMENTS

~~SECTION 1 Proposed amendments to these Bylaws may be considered at any regular or special meeting of the Board of Directors, provided the Directors have been furnished copies of the proposed amendments not less than 10 days prior to the meeting. Proposed amendments must receive the affirmative vote of two thirds of the members of the Board of Directors present and voting, and a majority vote of the membership present and voting at a subsequent meeting of the Association.~~



ITEM: Groundwater and Surface Water Committee Updates
DATE: March 10, 2022
BOARD CONTACT: Brian Sledge, Hope Wells, Lyn Clancy, and Walt Sears
STAFF CONTACT: Sarah Kirkle

Background Information: With all of the water-related agencies up for Sunset, the agency Sunset bills will make for a big water session during the 88th Legislature. The Groundwater and Surface Water committees and the TWCA Board will actively monitor recommendations from Sunset and interim legislative committee charges this Spring and can consider additional subcommittees or other means to respond to issues as they arise.

Surface Water Committee (SWC)

1. Committee Issues Selection. As with past interims, the SWC chairs requested proposals from members for issues that the committee might consider this interim. This is an important step in the process, both to allow members an opportunity to participate and because legislators often ask TWCA and members whether the Association considered issues that are the subject of legislation during session. In considering proposals, the chairs reiterated that the SWC was formed to proactively develop and support consensus-based solutions to state surface water issues at the Texas Legislature (though occasionally we do address state rulemaking initiatives). It does not generally take defensive positions, tackle federal matters, or pursue theoretical water discussions that are more appropriately addressed by the TWCA Board of Directors, joint/broader committees, or TWCA's policy documents. Also, in the interest of the committee members' time and resources, the chairs try to determine whether issues are ripe for consensus at TWCA before forming subcommittees.

Consistent with these principles, committee members were polled as to whether (1) the proposal has an identifiable state legislative solution and (2) TWCA members can likely reach consensus on it. The poll results showed support for taking up two items, WAM updates and aligning state water and flood planning processes. Together with the two issues the SWC chairs have already formed based on high anticipated legislative activity, the SWC will have four subcommittees:

1. TCEQ authority to curtail water rights in a drought (TCEQ SER Issue 2)
2. Implementation of S.B. 3 (87th Legislature) related to water reliability during a power outage
3. WAM updates
4. Aligning state water and flood planning processes

2. TCEQ Sunset Water Shortage Emergency/Drought Position Paper. As discussed at the December TWCA Board meeting, the SWC formed a workgroup to solicit feedback and determine next steps on Issue #2 of TCEQ's Sunset Self-Evaluation Report related to reallocation of surface water during water shortage emergencies or drought. To summarize the workgroup's discussion on this issue, it developed the draft position paper that follows. Since the December Board discussion, the chairs of the workgroup have worked with interested TWCA Board members to make changes to the position paper. The SWC chairs recommend that the Board approve the updated position paper so that it may be used as a briefing document with legislative or agency offices, as needed, in response to any potential recommendations from Sunset or if this issue is an interim charge. Outside of the position paper, the SWC subcommittee on this topic intends to begin meetings to consider these issues later this Spring. Any legislative proposals originating from the subcommittee would be routed through the SWC and Board in advance of the next legislative session.

3. Direct Onsite Reuse Subcommittee (Chairs: Emily Rogers and Vanessa Puig-Williams). This subcommittee, formed in 2020, has drafted proposed changes to TCEQ rules to clarify requirements related to direct onsite reuse of domestic wastewater. Last Fall, the subcommittee unanimously approved proposed draft rules that

were shared with the TWCA board at the December meeting. The board authorized moving forward on the draft rules with other associations and TCEQ leadership to obtain feedback and continue to work on a final rulemaking proposal. Subcommittee members have since met with TCEQ leadership and external stakeholders and are currently working on tweaks to the drafts in the hopes that it may be ready for filing at the agency sometime late spring.

Groundwater Committee

The Groundwater Committee has solicited ideas for potential state legislative changes through a written survey from its membership and the chairs have been working through the issues submitted. We plan to hold an initial meeting to discuss with committee membership in person sometime after the Annual Convention.

Joint Committee Matters

- 1. Joint Task Force on Waste.** After meeting to discuss issues that cross jurisdictions between the two committees, the Surface Water and Groundwater Committee chairs recommend that the TWCA President appoint a joint task force to discuss “waste” of groundwater and its implications for storage in and transport of groundwater using state water courses. This issue impacts many other discussions about surface-groundwater interactions or permitting concerns— meaning that we cannot reach consensus on many of these other issues until the larger differences are resolved.

The chairs recommend that appointees to the joint task force be comprised of stakeholders from both the Surface Water and Groundwater Committees. The joint task force will develop an informational paper that identifies (1) the varying perspectives and approaches used to address “waste” and potential conflicts between Chapters 11 and 36, Water Code, and (2) possible solutions to be considered later by a larger joint committee or the Board. The joint task force will periodically provide updates of its activities to the Surface Water and Groundwater Committees and may solicit input or feedback from those committees. *Note that we do not anticipate that the task force will draft any legislation for the 88th Session.*

- 2. Vote Sharing for TWCA Legislative Committees.** TWCA’s legislatively focused committees - the Surface Water and Groundwater Committees - use voting thresholds as one way to encourage a consensus-based approach to proposed legislative changes to water policy. To promote accountability in voting and to help identify potential barriers to the development of consensus on policy proposals, TWCA staff generally shares the voting results for proposals for change with TWCA leadership, particularly the relevant committee and/or subcommittee chairs overseeing the consensus process. However, TWCA staff has not shared individual results of committee and subcommittee votes outside of the committee. Formalizing this policy of not sharing individual votes externally, notwithstanding the Open Meetings Act, would encourage participation and accountability in voting but hopefully prevent votes from being weaponized or politicized outside of the Association.

Recommended Actions:

- Approve the position paper for use, as needed, in briefing legislative or agency offices related to the issue of curtailment of senior water rights during emergencies.
- TWCA President to create a joint task force to discuss “waste” of groundwater and, in consultation with the SWC and GC chairs, appoint 6-8 members from each committee, respectively, to develop a white paper identifying the issues, considerations affecting resolution of the issues, and potential approaches that might be used to resolve apparent conflicts.
- Adopt a policy to keep legislative committee votes within the Committee (with the Open Meetings Act being the only exception).

TWCA Position Paper on TCEQ’s Sunset Self-Evaluation Report Issue #2: “Authority to Protect Public Health, Safety, and Welfare During Droughts and Emergency Water Shortages”

In its Self-Evaluation Report (SER) Issue #2, the Texas Commission on Environmental Quality (TCEQ) outlines its administration of water rights in accordance with the Prior Appropriation Doctrine, including its duty to suspend junior water rights as necessary to protect senior water rights during times of drought. Noting that junior water right owners can include municipal users and power generation users, it suggests a possible statutory change that would allow the agency to deviate from strict prior appropriations laws to protect public health, safety, and welfare during extreme droughts or emergency shortages of water. While the Texas Water Conservation Association (TWCA) recognizes and shares the agency’s concern regarding the protection of public health, safety and welfare during extreme conditions, the Association urges that any such proposal also carefully consider constitutional property right protections and impacts to the state water planning process.

Constitutional Property Right Protections. In Texas, water rights are property rights and may not be taken without just compensation. Since 1895, the state has relied on the Prior Appropriations Doctrine as a fundamental legal tenet of how Texas will allocate and manage state water. Under this law, embodied within Texas Water Code (TWC) §11.027, senior rights are protected via the principle of “first in time, first in right,” making them more reliable when state water resources are affected by drought. Because of their higher reliability, senior water rights are more valuable to their owners and potential buyers of these water rights.

In 2011, TCEQ Sunset legislation proposed to address water emergencies through a proposal similar to SER Issue #2. Stakeholders, including TWCA, voiced concerns that a failure to comply with the Prior Appropriations Doctrine would constitute a taking of private property for public use and create regulatory uncertainty, disrupting current state water management systems. In response to such concerns raised by TWCA and others, the Legislature, in adopting TWC §11.053, required TCEQ to strictly adhere to the laws related to prior appropriations to protect private property rights.

The courts confirmed this approach. In 2019, the Texas Supreme Court let stand the Corpus Christi Court of Appeals 2015 opinion that TCEQ’s rules implementing TWC §11.053 improperly departed from the language of TWC 11.053 when the agency exempted certain municipalities and electric generator junior water rights holders from curtailments – but not agricultural users and others – when a senior water right holder made a priority call.¹

¹ *Tex. Comm’n on Env’tl. Quality v. Tex. Farm Bureau*, 460 S.W.3d 264 (Tex. App.—Corpus Christi 2015, pet. denied).

As noted by the Court of Appeals, TCEQ already has authority to reallocate state water supplies during drought through Texas Water Code §11.139, which requires compensation for the water in line with constitutional property right protections. Absent a compensation requirement, TCEQ's SER Issue #2 would allow the agency to set aside the prior appropriations law during the precise times when senior water rights are most needed, potentially destabilizing the system upon which water entities rely to ensure availability of their water supplies. Further, reallocation of state surface water supplies offers only limited relief in drought, and only to communities relying on surface water (as opposed to groundwater), with a junior right, and in certain geographic locations, and would not address a water shortage emergency for the majority of communities at highest risk of running out of water.

Impacts to State Water Planning Process. Texas's regional and state water planning process relies on the continued application of the Prior Appropriation Doctrine to help identify communities or water user groups that may be more vulnerable to water shortages during drought due to the "junior" nature of their water rights. A key part of the planning process is evaluating potential water shortages so that these communities and water users can identify and implement strategies during drought and as water demand grows over time. While water providers cannot plan for every contingency, the prior appropriations system provides certainty against which water providers can reasonably plan for their needs.

Through the water planning process, many TWCA members have identified the need for additional water supplies and subsequently acted to secure those supplies to ensure they can meet the needs of customers, in reliance on the prior appropriate system. Implementation of the State Water Plan is key to avoiding water shortages during a drought; if junior water right holders can receive emergency relief for a water shortage in a drought by using others' senior water rights, it could reduce their incentive to secure the additional reliable water supplies the water plan has identified as needed for these entities.



ITEM: Water Laws Committee Report
DATE: March 10, 2022
BOARD CONTACT: Howard S. Slobodin
STAFF CONTACT: Stacey Steinbach

BACKGROUND INFORMATION

Amicus Requests. TWCA has received the attached request for amicus participation from Mike Booth in *Perry Bonnin, Ace Chandler and Michael Manuel, et al. v. Sabine River Authority of Texas and Sabine River Authority, State of Louisiana*. After consultation with a resource team, TWCA Water Laws Chair Howard S. Slobodin recommends that TWCA file a letter brief in the case and additionally asks the board to authorize TWCA to expend funds from the Legal Advocacy Fund to engage outside counsel to assist in preparing a brief. The case concerns flooding liability associated with the operations of Toledo Bend Reservoir. Expert testimony presented in the case could affect the liability of water supply reservoir owners statewide.

Texas Commission on Environmental Quality and Dos Republicas Coal Partnership v. Maverick County et al. TWCA received positive news from the Texas Supreme Court on a case in which TWCA weighed in with amicus support. You'll recall this case concerned who must possess a TPDES permit if the owner and operator of a facility are not the same entity. TWCA (and others, including Texas Farm Bureau and other similar associations) filed an amicus letter with SCOTX supporting TCEQ's and DRCP's petitions and requesting that the Court take up and reverse the decision of the Third Court of appeals. The Court unanimously agreed with us on the owner/operator issue, and reversed the court of appeals opinion on the matter, thereby affirming the TCEQ's decision about who was the mine operator.

CLE Annual Convention Update: On Friday morning, TWCA will host a Case Law Update and Legal Ethics as our water laws section of the program. Overall, TWCA has applied for up to 8.75 hours of CLE, including 1.0 hours of legal ethics, for this convention and we will let you know when we receive approval from the State Bar.

Recommended Actions:

- Authorize TWCA to file an amicus brief in the *Bonnin* case, and further authorize TWCA to enter into a contract with outside counsel, as available and necessary, to assist with the filing of a brief in the matter using funds from TWCA's Legal Advocacy Fund in an amount not to exceed \$10,000.



Request for TWCA Amicus Participation
TWCA Water Laws Committee

Case for which TWCA amicus participation is requested:

Requestor: Michael Booth

1. Please state the legal issue to be resolved and how it relates to the criteria outlined in TWCA's [Amicus Brief Policy](#).

As discussed in much more detail below, this case involves damages from a 500-year flood event that happened on the Sabine River downstream of the Toledo Bend Reservoir owned and operated by the Defendant, Sabine River of Authority of Texas (SRA-T). The TWCA members to be immediately impacted by the court finding for the plaintiffs would be the owners and operators of dams in the State. Customers of those entities would have water rates increased from such a precedent. Few if any members would be against the position TWCA would take in an amicus supporting the SRA-T in this case.

A TWCA amicus in this matter will be in support of a core precedent in flooding lawsuits related to downstream flooding when it has been demonstrated that peak outflows are less than they would have been but for the dam and consistent with TWCA positions and policy.

2. Please provide a summary of the facts and relevant authorities both in support of and which stand against the proposition to be argued.

This lawsuit arises out of a March 2016 flood event in Southeast Texas and Southwest Louisiana following a 500-year storm event.

The plaintiff landowners filed suit in the United States District Court for the Eastern District of Texas (Beaumont Division), alleging that Sabine River Authority of Texas ("SRA-T") and Sabine River Authority Louisiana ("SRA-L") took their property without just compensation in violation of the Fifth Amendment to the United States Constitution by accepting a FERC license and operating the Toledo Bend reservoir and dam ("the Toledo Bend Project") in accordance with that license. Specifically, Plaintiffs allege:

On or about March 9, 2016, SRA-T and SRA-L opened the spillway gates, as required by the 2014 license, releasing, at its peak, 200,000 cfs (more than 10 times the amount of water that would cause the taking and destruction of property in Deweyville, Texas)... SRA-T has admitted in prior filings with this Court that it opened the spillways as and when it did in compliance with the terms and requirements of the 2014 license that SRA-T and SRA-L voluntarily

accepted....Plaintiffs allege the taking and destruction of their property occurred when SRA-T and SRA-L voluntarily accepted the 2014 license and obligated themselves to comply with the terms of that license, including, without limitation, the Guide for Spillway Gate Operation for Toledo Bend Reservoir and Supplemental Guide and when SRA-T and SRA-L operated the dam in compliance with the 2014 license in March 2016.... [T]he unconstitutional taking (the flooding) of which Plaintiffs complain is the flooding caused by the water released through the spillways.

A copy of Plaintiffs' Amended Original Complaint is attached hereto.

SRA-T disputes that its 2014 FERC license and operation of the Toledo Bend Project caused Plaintiffs' alleged damages. SRA-T contends it did nothing to worsen the flooding above that which would have occurred had the Toledo Bend Project not been in existence. In fact, had the Project not been in place during this extraordinary rainfall event, Plaintiffs' properties would have undoubtedly experienced significantly higher flood waters in a much shorter timeframe, thereby resulting in significantly greater property damage than that which actually occurred. In support of this causation defense, SRA-T will rely upon expert testimony and recent caselaw including *In re Downstream Addicks and Barker (Texas) Flood-Control Reservoirs*, 147 Fed. Ct.566 (Fed. Cir. 2020) and *St. Bernard Parish Government v. United States*, 887 F.3d 1354 (Fed. Cir. 2018), cert. denied, 139 S. Ct. 796 (2019).

Additionally, SRA-T will establish that the peak outflow from the Toledo Bend dam was roughly one-third of the peak inflow into the Toledo Bend reservoir during the March 2016 rainfall event made the basis of suit. As a matter of established Texas law, that can never constitute a taking. *See, e.g., Sabine River Authority of Texas v. Hughes*, 92 S.W.2d 640, 642 (Tex. App.— Beaumont 2002, writ denied); *Wickham v. San Jacinto River Auth.*, 979 S.W.2d 876, 880-81 (Tex.App. 1998); *Waller v. Sabine River Authority of Texas*, No. 09-18-00040-CV, 2018 WL 6378510 (Tex. App.—Beaumont 2018, no pet.); *but see San Jacinto River Auth. v. Brocker, et al*, No. 14- 18-005170CV, 2021 WL 5117889 (Tex. App.—Houston [14th Dist.] Nov. 4, 2021, no pet.).

3. Please provide background of the litigants or other parties.

Plaintiffs include more than 700 “downstream” landowners in Texas and Louisiana whose properties were allegedly flooded during the March 2016 rain event. They are represented by Reaud, Morgan & Quinn, L.L.P. Attorney John Werner is their lead counsel.

4. Please summarize past and projected administrative and/or legal proceedings.

This case has a long and tortured procedural history, which is set forth more fully in the attached Motion to Dismiss Under Rule 12(c) and Memorandum of Law in Support. In sum, the same Plaintiffs originally filed suit in Orange County District Court alleging the same takings claim under the state constitution. In July 2020, the state court granted SRA-T's plea to the jurisdiction and dismissed Plaintiffs' claims with prejudice. Plaintiffs refiled the instant

suit in federal court based on the same factual allegations, asserting a takings claim under the U.S. constitution. The Court denied SRA-T's motion to dismiss based on *res judicata* grounds.

SRA-T has completed discovery on the liability issues and is preparing Motions to exclude Plaintiffs' experts and a Motion for Summary Judgment, to be filed before March 23, 2022.

5. Are there other sources of legal support (e.g., other friends of the court)?

Maybe the TML or the State of Texas through the TWDB.

6. How will TWCA's support increase the probability of obtaining a result favorable to TWCA's membership interests and what is the basis for that conclusion?

TWCA as the association with the majority of reservoir owners and operators in Texas is in the unique position to provide support to the SRA-T and information to the Court.

Information Below This Line is for Water Laws Committee Use

Water Laws Resource Team Assigned:

Notes:

Actions:

Is use of TWCA legal advocacy funds recommended?

Recommended attorney or law firm to represent TWCA, if applicable:



ITEM: Membership and Services Committee Report
DATE: March 10, 2022
BOARD CONTACTS: Connie Curtis, Chair, and Lauren Kalisek and Hope Wells, DEI Subcommittee Chairs
STAFF CONTACT: Adeline Fox

BACKGROUND INFORMATION

The DEI subcommittee of the TWCA Membership and Services Committee has developed a mission and list of initial goals. The subcommittee reached consensus on the attached draft and is including it as an update to the TWCA Board of Directors.

Recommended Action: No action is required at this time.

**TWCA Membership and Services Committee
Diversity Equity and Inclusion Subcommittee**

Mission and Goals--Updated

February 22, 2022

Mission:

To promote a greater understanding and commitment toward diversity, equity, and inclusion throughout TWCA membership, and to ensure that the representation of the organization reflects the diversity of the members and stakeholders we serve.

Initial Goals:

Develop programming relating to diversity, equity and inclusion, both through separate webinar events and at TWCA conferences.

Develop a page on the TWCA website that provides tools and resources to assist the membership in diversity efforts within their own organizations, including potential speakers and training opportunities.

Identify outreach efforts and opportunities to partner with other organizations on programming and recruitment practices designed to promote diverse participation in the water industry.

Discuss and identify additional long term goals and initiatives with metrics to measure success. These goals and metrics will be offered to the TWCA Board for its consideration and inclusion in the next TWCA Strategic Plan update.