



BOIS D'ARC LAKE CONSTRUCTION IN NORTH TEXAS

# TWCA FEDERAL PRIORITIES - 2022



## VISION

To be a trusted resource promoting sound water policy for Texas.

## MISSION

### BUILD



Build Consensus

### EDUCATE



Educate Members & Policymakers

### ADVOCATE

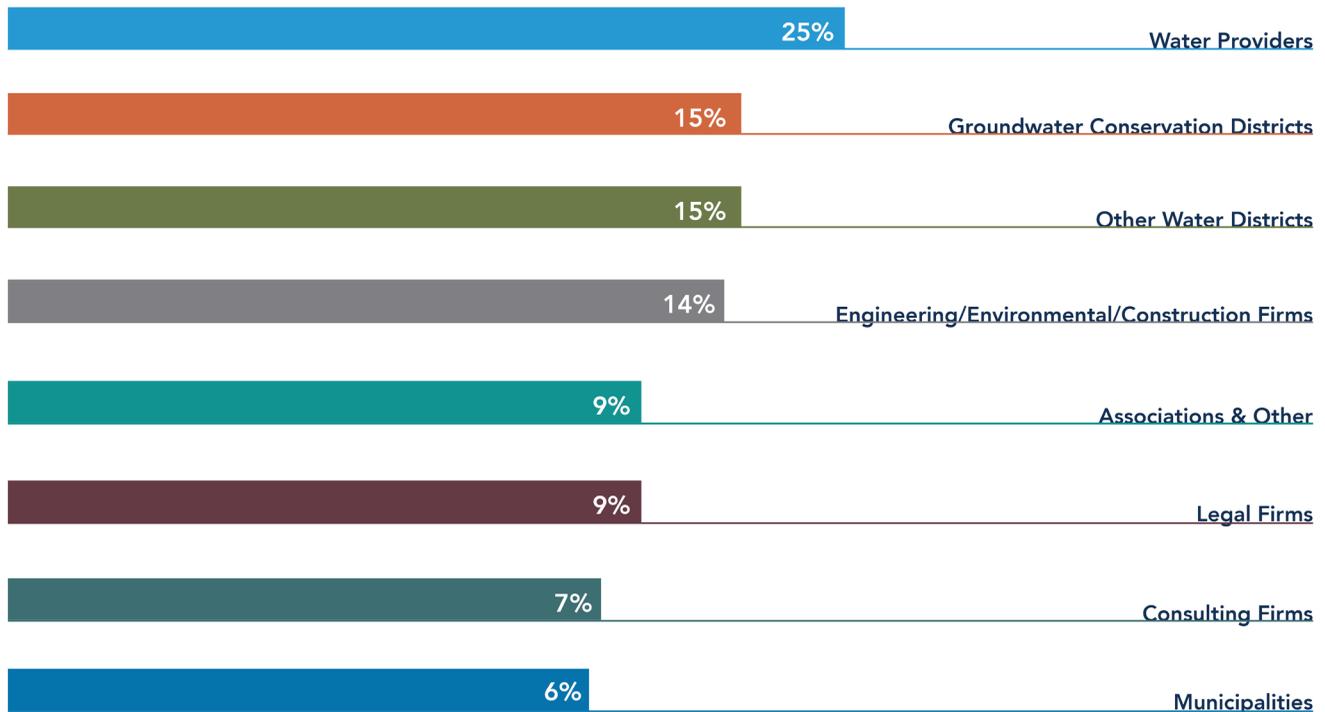


Advocate on Water Issues

## MEMBERSHIP OVERVIEW

TWCA members are responsible for the state’s water supply and development and provide water and wastewater services to the vast majority of Texans. TWCA represents 400 member entities across the state.

## MEMBERSHIP BREAKOUT 2022



### Thank you to our planning committee and issue paper contributors:

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**Photo on Cover:** Provided by North Texas Municipal Water District & Freese & Nichols, Inc.

# INTRODUCTION

In 1924, an unknown state meteorologist described Texas as a “land of perennial drought broken by the occasional devastating flood.” Balancing needs of seemingly opposing forces is a hallmark of Texas’ water success. From the state’s innovative “bottom-up” consensus-driven approach to water supply planning to its newly created flood planning process and extensive funding mechanisms for flood and drought and everything in between, Texas is a national leader on water issues. As Texas water professionals focusing on promoting sound water policy for this state, we are committed to the availability of safe, secure, and sustainable water to meet our state’s diverse growing demands. TWCA members are responsible for the state’s water supply and development and provide water and wastewater services to the vast majority of Texans.

Meeting Texas’ water resource needs is of critical importance to the economic success of both Texas and the U.S. This document outlines TWCA’s top federal water issues for 2022, based on a set of overarching principles that guide our outreach

**TWCA Federal Policy Guiding Principles**

- 1) State Primacy Over Water Resources
- 2) Clear, Consistent, Predictable, and Economical Federal Regulation
- 3) Partnership and Shared Investment in Federal Policy Development & Initiatives
- 4) Science, Transparency, and Public Participation
- 5) Intergovernmental Coordination with States, Tribes, and Local Project Sponsors

on federal water resources legislation and policy. While the pandemic prevented TWCA members from presenting these issues to Congressional offices during Texas Water Day, we look forward to continuing discussion of these issues in the future.

You can find more information on TWCA’s Federal Priorities and other federal issues at [www.twca.org/federalaffairs](http://www.twca.org/federalaffairs).



**46%**  
of U.S. Army Corps of Engineers (USACE) water supply is in Texas, 89% of which is owned by TWCA members



**254**  
Each of Texas’ 254 counties has experienced at least one major flood disaster



**9%**  
of Americans live in Texas and Texas is the fastest growing state with more than 1,000 people moving to Texas each day



**10th**  
Texas has the 10th largest economy in the world and the fastest growing economy in the U.S.



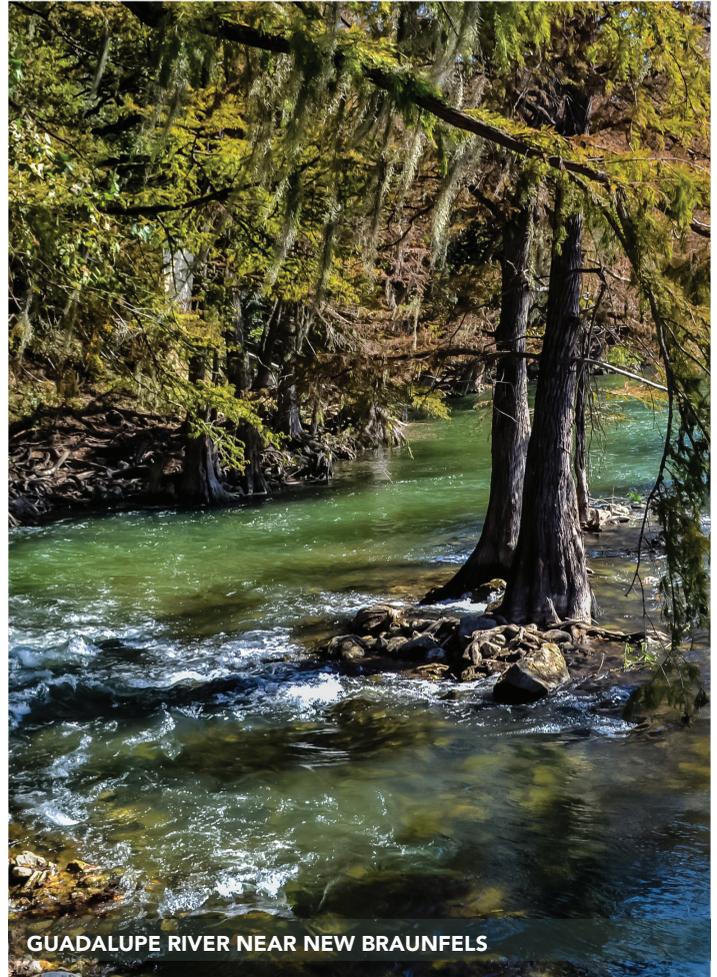
**11%**  
of levee miles in the USACE National Levee Database are sponsored by TWCA members



**66%**  
of U.S. Geological Survey stream gauges in Texas receive funding from TWCA members

### Waters of the U.S. (WOTUS) Rulemaking

TWCA believes it is inappropriate to conduct WOTUS rulemaking while the U.S. Supreme Court is reviewing *Sackett v. Environmental Protection Agency (EPA)*, a case squarely addressing the proper test for Clean Water Act jurisdiction. Regulatory expansions of federal jurisdiction should be based on clear legislative mandates and should never assume the most expansive theoretical framework. A case-by-case approach, without more guardrails in the regulations, leaves stakeholders exposed to district-level discretion that is overly burdensome to individual applicants. Once rulemaking is appropriate, state primacy on water resources, improved predictability, and maintenance of key exemptions should be foundational principles of a WOTUS rulemaking.



GUADALUPE RIVER NEAR NEW BRAUNFELS

### REQUESTS OF CONGRESS:

- **Ask EPA and USACE to stop pursuing the proposed WOTUS rule (“Proposed Rule”) until the Supreme Court issues guidance in *Sackett v. EPA*.** The issue accepted for Court review will inform the scope of federal jurisdiction under the Clean Water Act. Waiting for Court guidance increases the likelihood that a rulemaking could bring clarity to stakeholders and respect the balance of federal and state power.
- **If the Agencies move forward with the Proposed Rule, encourage the clear and appropriate limits of federal jurisdiction.** A Proposed Rule should include exemptions for ditches, canals, and other man-made water management infrastructure, which are critical to state and local management of land and water use. Any expansion of federal jurisdiction should be acknowledged in a transparent manner and Congress should match the increased workload with additional federal resources to ensure timely processing of permit applications and mitigation approaches or provide other flexibilities to general permitting.
- **Use Congressional oversight to ensure transparency and accountability in rulemaking and implementation** so that the Agencies do not have unfettered cover to expand federal jurisdiction under a vague regulatory standard.

## Endangered Species Impacts to Water Infrastructure Projects

The implementation of the Endangered Species Act (ESA) is often fraught with issues or assumptions that undermine confidence in the final listing decision. In many cases, the lack of credible or comprehensive science can sway evaluations towards a positive listing. Once listed, substantial adjustments to land and water use are often required to protect the species at enormous costs to water and wastewater providers, continuing even when better scientific information demonstrates that the species does not need protection.

### REQUEST OF CONGRESS:

- Continue oversight of the U.S. Fish and Wildlife Services' (USFWS) implementation of the ESA to:
  - Ensure listing decisions are based on sound science
  - Support efforts to expand the scientific understanding of species so that listing and delisting decisions can be made in a timely and defensible manner
  - Make sure USFWS is conducting five-year assessments as required

### REQUEST OF USFWS:

- Provide guidance on the use of climate data in threat assessment and listing decisions.

## Regulation of Per- and Polyfluoroalkyl Substances (PFAS)

Growing concerns over PFAS contamination, and the resulting public health effects, are driving new regulatory requirements that may affect water and wastewater management. Setting treatment standards outside of a data-driven process could adversely affect water and wastewater management in Texas and nationwide.

### REQUESTS OF CONGRESS:

- Refrain from enacting legislation to regulate PFAS. Continue to defer to EPA's technical expertise in establishing PFAS regulations, and the associated regulatory stakeholder process.
- Enact legislation to fund PFAS clean-up. Provide funding to water and wastewater utilities to specifically address PFAS contamination in water, wastewater, and biosolids.
- Enact legislation to fund PFAS research. Fund research on: (1) health effects data on PFAS that pose a human health risk; (2) analytical methods to measure levels of PFAS in environmental samples; and (3) technologies to cost-effectively remove problematic PFAS from drinking water and wastewater to address public health concerns.

### REQUESTS OF EPA:

- Improve monitoring and research of PFAS.
- Utilize national science for establishing risk-based PFAS standards under multiple state and federal statutory authorities.
- Provide guidance regarding how to communicate the presence of low levels of PFAS in drinking water and wastewater.
- Identify wastewater influent categories where PFAS would reasonably be suspected.



### Expedite Rehabilitation of Flood Control Projects

Post-flood rehabilitation of flood control projects active in the P.L. 84-99 program are delayed an average of 2-4 years by requirements to obtain USACE approval and supplemental appropriations before making facility repairs. During those years, local governments are forced to either operate damaged facilities - increasing risks - or bear the cost of repairs without reimbursement.

#### REQUEST OF CONGRESS:

- Authorize the Assistant Secretary of the Army (Civil Works) (ASA(CW)) to expedite flood control project repairs by allowing reimbursement of the federal share of rehabilitation expenses to non-federal sponsors under existing funding mechanisms.

### Amortization of Repair, Rehabilitation, and Replacement (RR&R) Costs at USACE Reservoirs

Non-federal sponsors of the water storage component of a USACE reservoir are responsible for 100% of the costs of construction, operations and maintenance, and RR&R associated with that storage. Federal law provides an option for non-federal sponsors to pay for construction costs in installments, but does not provide a similar option for RR&R. As USACE reservoirs age, the need for RR&R increases, as does the cost of such capital investment. However, non-federal sponsors are not typically involved in the decision making or timing of RR&R or dam safety activities.

#### REQUEST OF CONGRESS:

- Authorize the ASA(CW) to allow non-federal sponsors to amortize dam repair, rehabilitation, and replacement costs for USACE projects, as they do for construction costs.

### Evaluation of Species Impacts for Maintenance of Existing Structures

USACE recently signed a memorandum with the National Oceanic and Atmospheric Administration (NOAA) that provides that existing structures will no longer be considered part of the baseline environment when determining the environmental effects of routine maintenance projects. The memo, which was not published for public comment in the Federal Register, could have far-reaching implications for water infrastructure, such as significant delays and increased costs even for routine maintenance projects. Without formal rulemaking and public comment, the agencies cannot know the full impacts of the changes on stakeholders, who have also been denied judicial review.

#### REQUEST OF CONGRESS:

- Require USACE and NOAA to undertake formal rulemaking, as required under the Administrative Procedures Act, to inform how the agencies evaluate the effects of maintenance at existing structures and impacts to endangered and threatened species and habitats.



MANSFIELD DAM IN AUSTIN

### USACE Reallocation of Storage

Many areas of Texas are experiencing major population growth, leading to increased water demands across all user groups and accelerating the timeline to develop new water supplies. While traditional, infrastructure-heavy plans such as reservoirs and pipelines are in place, these types of projects can take many years. Reallocation of existing storage at multi-purpose USACE reservoirs presents one of the most efficient and potentially cost-effective ways to develop new supplies in a short period of time.

#### REQUEST OF CONGRESS:

- Fund USACE to study reallocation of storage at its multi-purpose reservoirs and provide the agency authority to approve reallocation studies for water supply.

#### REQUEST OF THE ASA(CW):

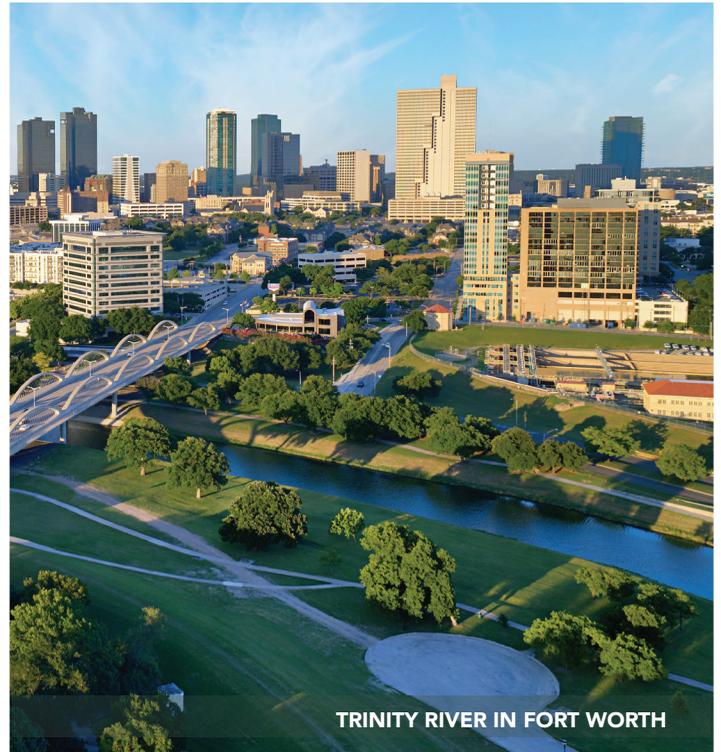
- Include sufficient funding in the USACE annual operations and maintenance budget request to enable efficient completion of reallocation studies for water supply.

### Exempt Water Conservation Rebates from Income Taxes

Water conservation is critical to meet the water needs for Texans today and into the future; it is expected to provide approximately 29% (2.2 million acre-feet per year) of all recommended water management strategy volumes in Texas in 2070. Exempting water conservation and stormwater management rebates provided by water providers from federal income taxes, as is already allowed for energy conservation, would encourage additional water conservation efforts.

#### REQUEST OF CONGRESS:

- Provide water rebates the same tax-exempt status as energy rebates by amending Section 136 of the Tax Code, such as through HR 4647 (The Water Conservation Rebate Tax Parity Act).



### Clean Water Act: Improve Certainty and Efficiency in 404 Permitting

Streamlining the Clean Water Act Section 404 permitting process for water supply projects is critical to ensuring that water supply needs are met in Texas. Satisfying extensive permit requirements often takes 10 years or more, increasing costs and delaying construction. All the while, EPA’s federal veto authority of the project looms – even after a project is approved.

#### REQUEST OF CONGRESS:

- Eliminate EPA’s broad “veto authority” for 404 permits associated with water supply projects.

#### REQUEST OF USACE & EPA:

- Coordinate to streamline the Section 404 permitting regulations and mitigation requirements.

## BUDGET ISSUES

### USACE

Limitations in the USACE operations and maintenance budget will potentially impact the agency's ability to meet the growing maintenance needs of its aging infrastructure in Texas and impact water providers' ability to efficiently manage use of state water.

### REQUEST OF CONGRESS & ASA(CW):

- Support sufficient funding to meet Texas water resource needs, to specifically fund:
  - scheduled repairs and maintenance at existing USACE reservoirs
  - studies for reallocation of water storage,
  - and the P.L. 84-99 program to implement repairs caused by major storm events.

### U.S. Geological Survey (USGS)

TWCA members rely on the data collected from USGS streamgages to protect their communities from flood and drought, which threaten both life and property. The USGS Cooperative Agreement funding for streamgaging, originally funded at a 50-50 cost-share, has eroded away, and cooperators are now shouldering 65% of the cost.

### REQUEST OF CONGRESS:

- Support full funding of:
  - Cooperative Agreement to restore 50/50 streamgage cost share
  - federal priority streamgages
  - Next Generation Water Observing System to enhance data collection and database modernization.

### U.S. Bureau of Reclamation (USBR)

USBR's funding allocation for Texas is small compared to other states – less than 1% of USBR's budget – despite great need for funds for water storage and delivery projects to support our rapidly growing population. Additionally, USBR programs that award funds to legacy projects discriminate against Texas and do not allow projects to compete on a level playing field.

### REQUEST OF CONGRESS:

- Increase USBR funding for Texas and replace the legacy Title XVI program with a competitive program.

