

TOLEDO BEND RESERVOIR ALONG THE SABINE RIVER



TWCA FEDERAL PRIORITIES - 2023



Scan this to view the document online



Promoting sound water policy for Texas



VISION

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

MISSION

BUILD



Build Consensus

EDUCATE



Educate Members & Policymakers

ADVOCATE

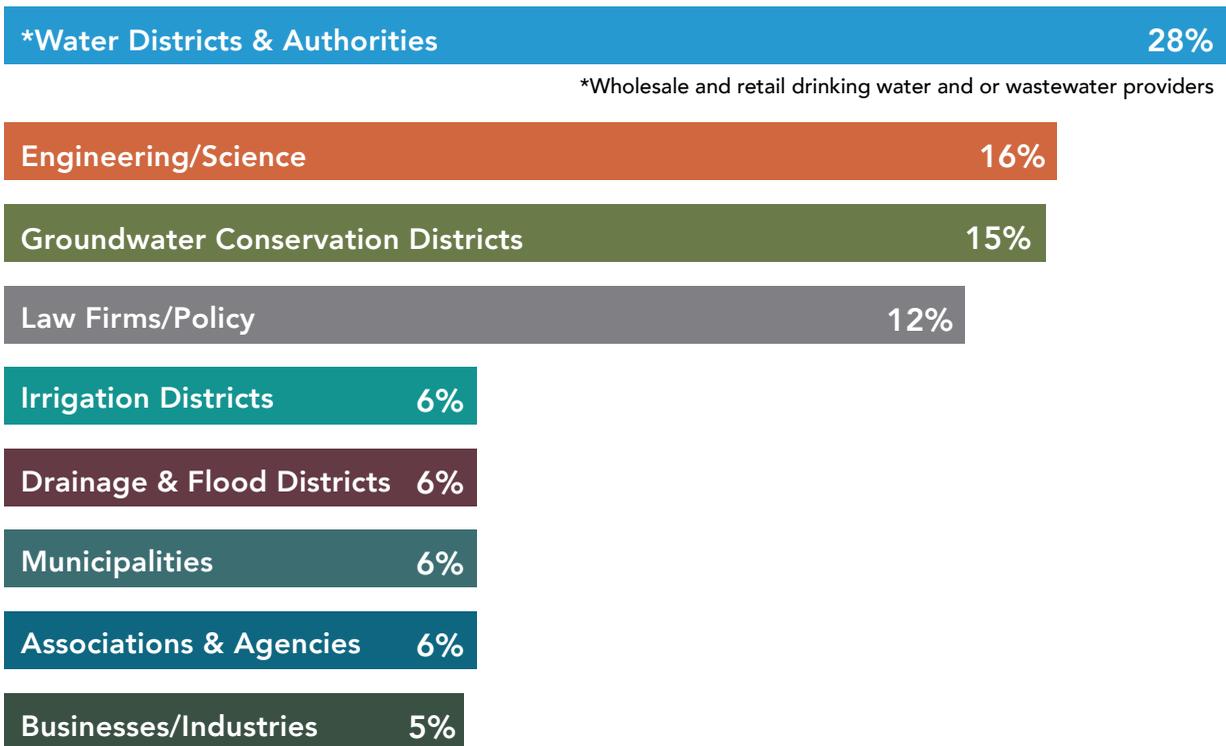


Advocate on Water Issues

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 2023



*Wholesale and retail drinking water and or wastewater providers

Thank you to our planning committee and issue paper contributors:

Denis Qualls, Tom Ray, Amy Stelter, Stephanie Bergeron-Perdue, Susan Butler, Lyn Clancy, Glenn Clingenpeel, Dan Crowley, Elizabeth Fazio-Hale, Mary Gugliuzza, Ellen McDonald, Fred Milton, Dan Opdyke, George Otstott, Nathan Pence, Matt Phillips, Dawn Pilcher, Ray Russo, Brian Sledge, Michelle Smith, Dominik Sobienty, Sara Thornton, Nathan Vassar, Jeff Walker, Steve Walthour, Kevin Ward, and Paulina Williams

TWCA Contributing Staff: Adeline Fox, Sarah Kirkle, and Stacey Steinbach

Photo on Cover: Toledo Bend Reservoir, courtesy of Sabine River Authority of Texas



TABLE OF CONTENTS - ISSUE PAPERS

■ Introduction	4
■ Key Issues:	5-7
- WOTUS	
- Endangered Species Impacts to Water Infrastructure Projects	
- Regulation of PFAS	
- Rehab of Flood Control Projects	
■ Emerging Issues:	7
- Evaluation of Species Impacts for Maintenance of Existing Structures	
- USACE Principles, Requirements, and Guidelines	
■ Continuing Issues:	8
- USACE Reallocation of Storage	
- Exempt Water Conservation Rebates	
- Clean Water Act	
■ Budget Issues:	9
- USACE	
- USGS	
- USBR	
- Water Infrastructure Funding	

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 2023, based on a set of overarching principles that guide our outreach on federal water resources legislation and policy.

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 and Initiatives
- 4) Science, Transparency, and Public Participation
- 5) Intergovernmental Coordination with States, Tribes, and Local Project Sponsors

You can find more information on TWCA’s Federal Priorities and other federal issues at 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 about 1,300 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

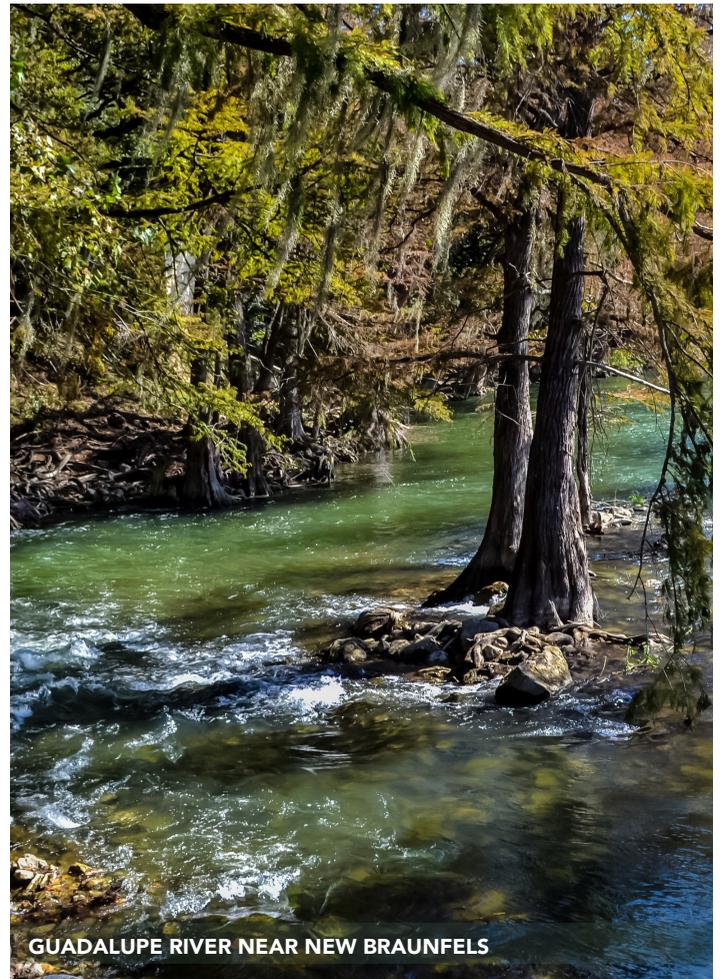


66%

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

Waters of the U.S. (WOTUS) Rulemaking

The federal government should not be finalizing yet another 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 broadest 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 EPA AND USACE:

- **Defer the March 20, 2023 effective date of the Final Rule until the Supreme Court issues guidance in *Sackett v. EPA*.** Waiting for Court guidance increases the likelihood that a rulemaking could bring clarity to stakeholders while respecting the balance of federal and state power.
- **Adopt clear and appropriate limits of federal jurisdiction.** Any future rule should include broad and clear 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.

REQUESTS OF CONGRESS:

- **Support and adopt the Congressional Review Act Joint Resolution that would rescind the Final Rule** to defer changes in the regulatory landscape until the Supreme Court's input can factor into the next iteration of a definition of WOTUS. **Provide oversight to ensure transparency and accountability in rulemaking and implementation** so that EPA and USACE do not have unfettered cover to expand federal jurisdiction under a vague regulatory standard.
- **Provide resources appropriate to assure federal jurisdiction is not unduly burdensome.**

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.

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.



KEY ISSUES

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 or bear the cost of repairs without reimbursement.

REQUEST OF CONGRESS:

- Authorize USACE to expedite flood control project repairs by allowing reimbursement of the federal share of rehabilitation expenses to non-federal sponsors under existing funding mechanisms.

EMERGING ISSUES

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 are also 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.

USACE Principles, Requirements, and Guidelines (PR&G)

The USACE PR&G are the comprehensive set of planning guidelines that instructs how USACE evaluates studies for major water resources projects. Recent discussions about how to weight the environmental, economic, and social outcomes of a project risk overlooking the underlying resources issue that needs to be addressed. Changes in the PR&G have the potential to up-end USACE's planning process and result in significant impacts on the local sponsor's project plan as well as project costs borne by local taxpayers.

REQUEST OF USACE:

Proposed USACE rules on PR&G should establish a clear, concise, and workable planning framework that balances all three relevant factors (environmental, economic, and social) and offers predictability and certainty into USACE decisions to fund a project. TWCA supports more detailed comments provided by the National Waterways Conference [waterways.org/advocacy/](https://www.waterways.org/advocacy/)

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 or decades. 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 USACE:

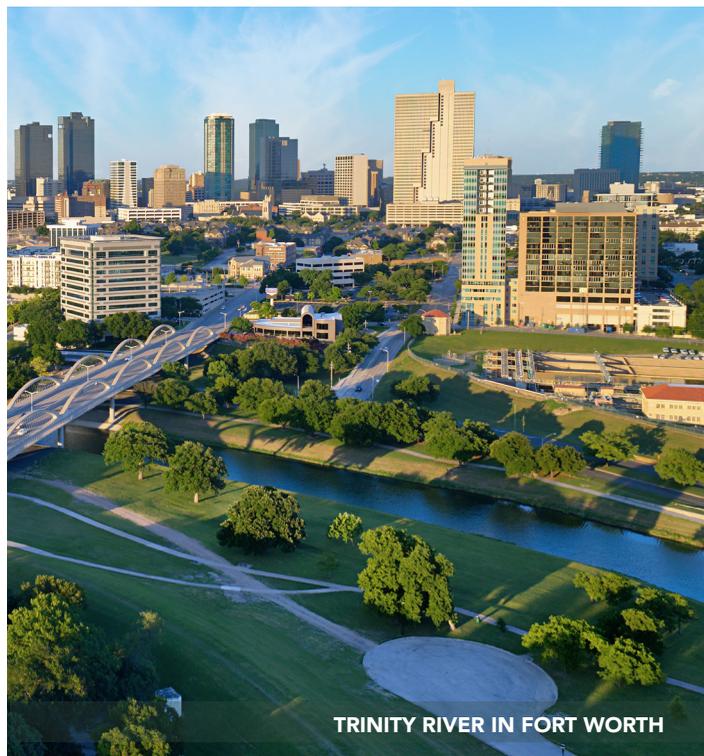
- Include sufficient funding in the USACE annual operations and maintenance budget request to enable efficient completion of reallocation studies for water supply.

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 rebates provided by water utilities for water conservation and stormwater management from federal income taxes, as is already allowed for energy conservation, would encourage additional water conservation efforts.

REQUEST OF CONGRESS:

- Provide water and stormwater rebates the same tax-exempt status as energy rebates by amending Section 136 of the Tax Code.



TRINITY RIVER IN FORT WORTH

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.

REQUEST OF USACE & EPA:

- Coordinate to streamline the Section 404 permitting regulations and mitigation requirements to ensure that critical water supply projects can be timely permitted and constructed to meet water supply needs.

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 & USACE:

- Support sufficient funding to meet Texas water resource needs, specifically to fund scheduled repairs and maintenance at existing USACE reservoirs, studies for reallocation of water storage, and for 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; and the 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.

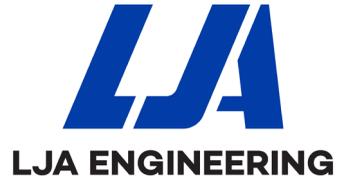
Water Infrastructure Funding

Water infrastructure projects are critical for the health, safety, and economy of Texas. Aging infrastructure, a booming population, and increased frequency of extreme weather have revealed water infrastructure vulnerabilities in each community. Increased use of earmarks in State Revolving Funds is resulting in a loss of tens of millions of dollars each year to Texas, hurting our ability to meet our water infrastructure needs.

REQUESTS OF CONGRESS:

- **Ensure sufficient, low-cost financing and funding options for water infrastructure projects.** Expand capacity and eligibility for key programs, such as State Revolving Funds, to facilitate availability of low-cost water infrastructure, including options for increased subsidies and grant options.
- **Reduce bureaucratic hurdles associated with federal water infrastructure funding.** Repeal various federal loan requirements that often duplicate state requirements, are unnecessary for water infrastructure projects, or add cost to water infrastructure projects.

Thank you to our sponsors!



Learn more at www.twca.org