



Legislators' Guide to the Issues

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WATER TRANSFERS 110

THE ISSUE

Water promises to be one of the most urgent, complex, and contentious issues for the 80th Texas Legislature. Demands of an expanding population compete with agricultural, industrial, and environmental needs for a plentiful water supply. While shortages have required some cities to transport water from distant sources over the past several years, there is more than sufficient water to meet the needs of all Texans today. However, water shortages could loom in the future if population growth fulfills expectations and drought constricts supply.

The State Water Plan proposes that future water needs be largely met by voluntary redistribution of water. The challenge is to find the means to redistribute water and to supplement this supply with emerging technologies, such as desalination. The high cost of redistribution and technologies have stimulated state government to expand public-private partnerships and private markets to help underwrite the cost. Now, fundamental principles of state water law—state “ownership” of surface water, state regulation of ground water, prior appropriation, and beneficial use—must be reconfigured to meet the rapidly changing needs of Texans.

Although future water supply will largely depend on private sector engagement, at present the private sector is allowed a very restricted role in water production and distribution. Because ground and surface water are highly regulated, the current water debate focuses on the role of government. Policymakers must ask if government regulation is the best way to protect public interest, determine fair water use, and protect the environment.

Some policymakers press to curtail private rights and increase government regulation to protect public interest and the environment against ruinous exploitation. Others press for the alternative to water regulation—water marketing—where supply and demand determine production, allocation, and use. Based on the experience of several western states, some policymakers believe water marketing is more effective than regulation in increasing water supply, conservation, and environmental protection. These policymakers propose strengthening private property rights for all water uses, making water rights freely transferable, and creating a legal system that will enforce these rights.

THE FACTS

- ★ Texas has approximately 191,000 river miles flowing through 23 major river basins and nine major and 20 minor aquifers.
- ★ Texas is home to the Ogallala, the world’s largest aquifer—it stretches across eight states and underlies 174,000 square miles.
- ★ Over half of the water Texans drink comes from aquifers.



- ★ The average Dallas resident uses 250 gallons of water each day.
- ★ Over three-quarters of irrigation comes from groundwater.
- ★ Water development strategies proposed by regional water groups have a price tag of almost \$18 billion.
- ★ The Texas Water Development Board says Texas needs eight new major reservoirs and 10 minor reservoirs at a cost exceeding \$4 billion.
- ★ Almost 66 percent of future water needs will be met by voluntary redistribution.
- ★ Almost 14 percent of future water needs could be met by water conservation measures.

RECOMMENDATIONS

- ★ Strengthen private property rights.
- ★ Make water rights freely transferable.
- ★ Strengthen enforceability of private property rights.
- ★ Allow individuals and associations to lease or purchase surface water from the state.
- ★ Replace contested regulations with explicit legislation.
- ★ Implement a long-term plan for water marketing to serve as the primary means of providing an adequate water supply for human, agricultural, industrial, and environmental needs.
- ★ Transfer regulatory authority to local boards, but demand general uniformity and fairness.
- ★ Expand incentives for soil and water conservation.
- ★ Focus state resources on serving as a clearinghouse for water marketing and banking, coordinating regional boards, providing scientific information, and proposing voluntary standards.
- ★ Expand public-private partnerships for developing and delivering water.
- ★ Encourage public utilities to privatize water production and/or distribution services.

RESOURCES

- *Choppy Waters: Understanding The Challenges To Texas Water Policy* by Susan Combs, Katharine Armstrong, and Kathleen Hartnett White, Texas Public Policy Foundation (Aug. 2004) <http://www.texaspolicy.com/pdf/2004-08-choopy-waters.pdf>.

THE ISSUE

Within the next 50 years, the population of Texas is expected to double. Finding sufficient water to meet rapidly growing demands presents a critical challenge for Texas policymakers. Efficiently managed, Texas has sufficient water resources across the state to meet those demands. Both the 1997 and 2002 State Water Plans identify voluntary redistribution of water as one of the primary means to meet future water needs. Water transfer has been successfully used in Texas and throughout the American West to provide water for growing cities, recreational purposes, and environmental needs; to promote efficient water use and conservation; to provide an alternative to reservoir construction; and to encourage bargaining between divergent interests.

Cities, ranchers, farmers, and industries have been transferring water for decades. These transactions have proven that voluntary redistribution, instead of government-compelled reallocation and regulation, serves as the best means to meet growing water needs.

Private property rights must be strengthened and state regulatory burdens must be eased to encourage and expand efforts to transfer water from areas of surplus to areas of need.

Certain Texas laws and policies need rethinking. For instance, Junior Water Rights were created in 1997 to discourage interbasin transfer, the junior water rights law makes rights to transferred water secondary to other rights in the basin. This rule makes ownership conditional on available supply; thus, in times of water scarcity, purchasers of water have no rights to the water they purchase. Another issue is the regulatory requirements of the Texas Commission on Environmental Quality (TCEQ) that make small water transfers uneconomical. Although small transfers of 3,000 acre-feet have been determined to have no impact and are exempt from the junior water rights rule, the Commission is required to subject small transfers to potentially expensive contested hearings. Additionally, groundwater districts exercise regulatory authority that acts as a chilling effect on water transfers. Districts have the authority to limit the amount of water that can be sold and can impose an export fee on transfers; they can also limit where water is transported and how it is used. Finally, changing water needs require updates to state law to allow the private sector a larger role in developing water sources, transporting water, and distributing water—particularly in municipalities.

THE FACTS

- ★ Texans use about 16.5 million acre-feet of water annually.
- ★ Nine aquifers supply almost 97 percent of groundwater used in the state.
- ★ Groundwater accounts for about 60 percent of Texas usage.
- ★ Conservation districts cover 90 percent of groundwater in Texas.



- ★ Eighty percent of groundwater is used for irrigation.
- ★ Sixty-five percent of surface water is used for municipal and industrial purposes.
- ★ Municipal and industrial use of water is expected to increase 5.4 million acrefeet annually and increase 28 percent over current use within the next 30 years.
- ★ Water transfer and marketing is now occurring all across Texas; Amarillo, Lubbock, and nine other Panhandle cities pump water from rural wells.
- ★ Fourteen of the 16 Regional Planning Groups propose water transfer projects—groups propose transferring approximately 33 percent of Texas surface water and 25 percent of groundwater used today.
- ★ The Brazos Valley Water Alliance, a landowner cooperative, has accumulated 133,000 acres of land in Brazos, Burtleson, and Milam counties and currently seeks a purchaser for its groundwater.

RECOMMENDATIONS

- ★ Allow transactions of less than 3,000 acre-feet to be exempt from the no-injury and contested case hearing rule if TCEQ determines there is minimal impact.
- ★ Eliminate the Junior Water Rights rule on interbasin transfers to strengthen private property rights and develop efficient water markets.
- ★ Remove legal barriers to private investment in providing surface and groundwater for municipal use.
- ★ Redefine the role of groundwater districts—management of groundwater at the local level will prove successful as long as general fairness standards and uniform treatment of all groundwater owners are required. The State must have a way to stop regulatory discrimination and abuse.
- ★ Provide specific authorization for local governments to contract with private entities for developing water sources, transporting, and distributing water.
- ★ Examine the feasibility of developing a common carrier system to convey and transport water—regulating the conveyance system but allowing competing carriers within the piping network.

RESOURCES

- *Solving The Texas Water Puzzle: Market-Based Allocation Of Water* by Ronald Kaiser, Texas Public Policy Foundation (Mar. 2005) <http://www.texaspolicy.com/pdf/2005-03-water.pdf>.
- *A Free Market Solution To Groundwater Allocation In Texas: A Critical Assessment Of The House Natural Resources Committee Interim Report On Groundwater* by Clay J. Landry, Texas Public Policy Foundation (Dec. 2000) <http://www.texaspolicy.com/pdf/2000-12-01-enviro-water.pdf>.