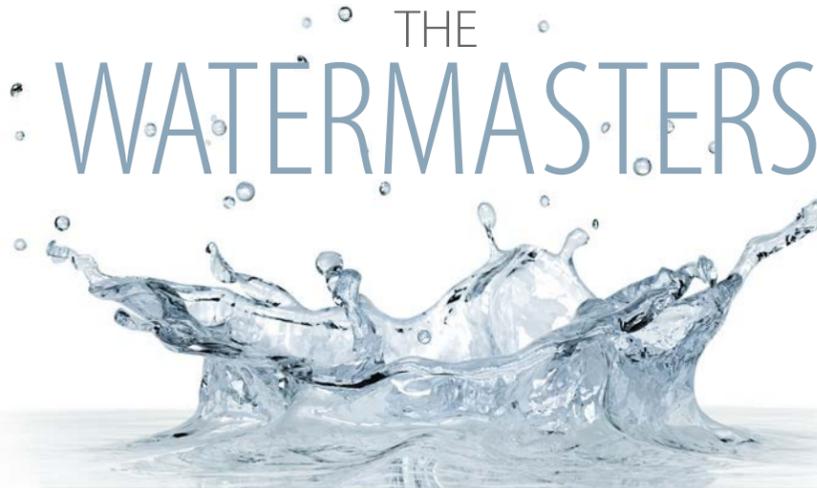




FISCAL NOTES

A Review of the Texas Economy from the Office of Susan Combs, Texas Comptroller of Public Accounts

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Texas program manages water rights

BY CORY CHANDLER

In some ways, the history of Texas is a story of water scarcity. Early pioneers erected windmills to supplement infrequent rainfalls, and cowboys riding herd on cattle drives wore bandanas to keep the dust at bay. Texas has only one lake of any size that wasn't built by man.

Surface water here can be as elusive as a mirage, and evaporate just as quickly when rainclouds turn stingy. It's no surprise, then, that managing Texans' often-competing claims to it can be tricky.

The agency charged with doing so is deciding whether a closer eye and quicker touch would more efficiently distribute water flowing through state waterways.

The Texas Commission on Environmental Quality (TCEQ), at the prompting of the Legislature, has begun assessing the state's river basins to determine whether they would benefit from having a "watermaster" to fine-tune water use and mediate disputes between rights holders.

What are Watermasters?

Watermasters were the brainchild of geologist and explorer J.W. Powell, whose 19th-century expeditions mapped out large portions of the American west, including the Grand Canyon.

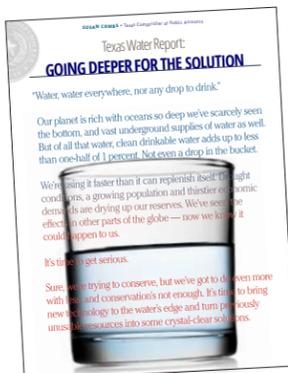
EXISTING WATERMASTER PROGRAMS

■ The Rio Grande Watermaster coordinates releases from the Amistad and Falcon reservoir system.

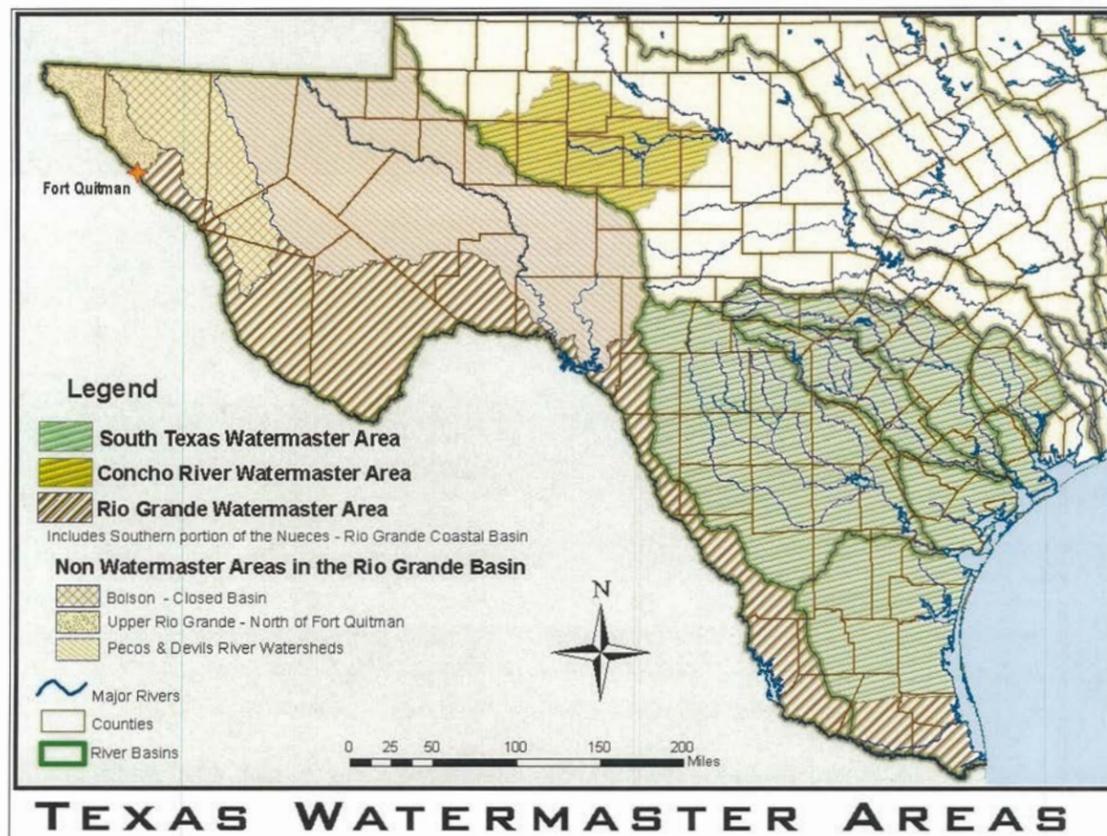
■ The South Texas Watermaster serves the Nueces, San Antonio, Guadalupe and Lavaca river basins as well as adjacent coastal basins.

■ The Concho Watermaster, currently a division of the South Texas Watermaster, serves the Concho River segment of the Colorado River Basin.

Source: Texas Commission on Environmental Quality (TCEQ)



For a detailed look at Texas water issues, read the Comptroller's new report on Texas water, *Texas Water Report: Going Deeper for the Solution*. [\(LINK\)](#)



Source: Texas Commission on Environmental Quality (TCEQ)

Years of study led Powell to formulate water policy recommendations for the arid west that stressed regional oversight of water resources, according to Texas Tech's *Administrative Law Journal*.

Powell proposed self-governing water districts within watershed areas, with watermasters overseeing individual water rights, a concept adopted by southwestern states such as California, Colorado and New Mexico.

Texas appointed its first watermaster — then called a “master in chancery” — to aid in disputes along the Rio Grande River in the 1950s. Texas' Water Rights Adjudication Act of 1967 gave the then-Texas Water Commission authority to appoint more watermasters.

Today, watermaster programs can be established by TCEQ, by court appointment or by legislation.

First in Time, First in Right

In Texas, the rules regulating surface water allocation are a bit like those governing a cafeteria line — the person who arrives first gets to fill his or her plate first. After that, the line forms. No cutting allowed.

TCEQ monitors the line, issuing and managing permits to surface water using a “first in time, first in right” principle, meaning that those with the oldest permits get first access to their share of water.

It's a simple enough process, but one that can be contentious during dry years, as farmers and ranchers crowd alongside homeowners, manufacturers and power generators to divvy up drought-shrunk water supplies.



GABRIEL ECKSTEIN,
Texas A&M
University School
of Law professor

“Given the current droughts, there just isn't enough water in those rivers to accommodate all water rights,” says Gabriel Eckstein, a professor at Texas A&M University School of Law with expertise in water policy.

In drought conditions, junior rights holders, which often include municipalities and power plants, may lose out.

Watermasters at Work

Watermasters and their staffs protect water rights by monitoring water use and storage levels. They also curtail illegal diversions and mediate conflicts among water users.

“The question you have to ask is, ‘What do you get when you add a watermaster?’” Eckstein said. “Generally speaking, there are some potential benefits if you are taking a big-picture look at managing a river basin.”

Three such programs exist in Texas, covering nine of the state's 23 river basins. Eckstein points out, though, that these programs cover a relatively small share of Texas' surface water.

Texas' three watermasters hold varying authority, but generally they work to enforce water claims without the lengthy legal wrangling that can occur between rights holders in basins without watermasters.

“Watermasters are supposed to address issues in a quicker fashion,” Eckstein said. “You have a much more responsive mechanism to managing water in a basin.”

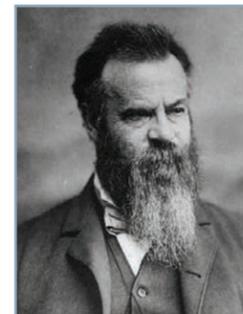
New Watermasters?

The 2011 Legislature tweaked the Texas Water Code to require that TCEQ conduct evaluations, twice each decade, of the need for watermasters in river basins without them.

TCEQ has proceeded cautiously so far, declining to recommend the creation of additional watermaster programs.

“The current watermaster programs, along with the TCEQ regional field staff, provide surface water management throughout the state,” says Amy Settemeyer, watermaster section manager. “The TCEQ will continue to manage surface water rights regardless of whether a watermaster program has been established in a certain area or not.”

The evaluations, however, have prompted concerns among



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Nineteenth-century geologist **J.W. Powell** was the first to recommend regional oversight of water resources.

those who see such programs as stripping control from local stakeholders and adding costly additional layers of regulation. Rights holders within watermaster jurisdictions must pay fees to support their operations and expenses.



KEN RAINWATER,
Texas Tech
University Water
Resources Center
professor

“Folks up in our neck of the woods aren’t real happy about it,” says Ken Rainwater, a professor with the Texas Tech University Water Resources Center, of TCEQ’s review of the Brazos River Basin, which contains 42,000 square miles of Texas from the New Mexico border to the Gulf of Mexico.

During its 2013 evaluation of the Trinity, San Jacinto and associated coastal basins, TCEQ received 32 comments from stakeholders, Settemeyer said. Among those, three were open to the addition of a watermaster, while 25 were opposed.

Mason County commissioners even passed a resolution opposing the appointment of a watermaster for the Colorado River Basin.

“The best stewards of the river are the farmers and ranchers,” Mason County Judge Jerry Bearden told the San Angelo Standard-Times.

Eckstein says that while watermasters can only enforce existing code, “there is resistance to the idea of someone from outside coming onto people’s land, checking their head gates, and telling them if and when they can use their water.”

Tomorrow’s Forecast

We can expect tensions over water rights to increase in coming decades, as new Texans continue crowding into our cities.

Thirsty families and lawns, not to mention the energy boom, will put additional demands on water traditionally used for irrigation — especially if dry weather patterns persist for much longer.

Drought has hammered Texas since 2011, pinching agricultural production, sparking wildfires and shrinking reservoir levels. As of mid-February 2014, about 58 percent of the state was experiencing some level of drought, and 8.5 percent languished in “extreme” or “exceptional” drought conditions, the two most severe categories.

Yet even as some communities impose emergency water restrictions, the state continues to welcome thousands of new residents. The U.S. Census Bureau estimates that Texas’ population swelled by more than 427,000 between 2011 and 2012 alone, netting the nation’s largest gains by far.

Our water planners must anticipate millions of new water consumers in coming decades. The Texas Water Development Board expects municipal users to surpass agricultural irrigation as the state’s chief source of water demand by 2060.

So how will Texas balance these needs? Time will have to tell.

In June 2013, the state’s 53rd Civil District Court rejected an attempt by TCEQ to exempt municipalities and power generators from an order curtailing water diversions along the Brazos River in response to drought conditions.

The move would have allowed those exempted to essentially cut in line ahead of more senior rights holders, many of them agricultural producers. In response to a lawsuit filed by Texas Farm Bureau, the court decided that TCEQ did not have the authority to curtail water rights based on need rather than seniority of rights.

More Evaluations to Come

In 2014, TCEQ will evaluate the Sabine, Neches and Neches-Trinity Coastal basins.

“We are in the preliminary stages of those evaluations,” Settemeyer says, adding that she anticipates stakeholders will receive letters requesting their input in early spring 2014.

TCEQ should schedule meetings throughout these basins for late spring and early summer.

WATERMASTER HEARINGS

TCEQ plans to follow this schedule to evaluate the remaining basins without a watermaster:

2014

- Sabine River Basin
- Neches River Basin
- Neches-Trinity Coastal Basin

2015

- Canadian River Basin
- Red River Basin

2016

- Sulfur River Basin