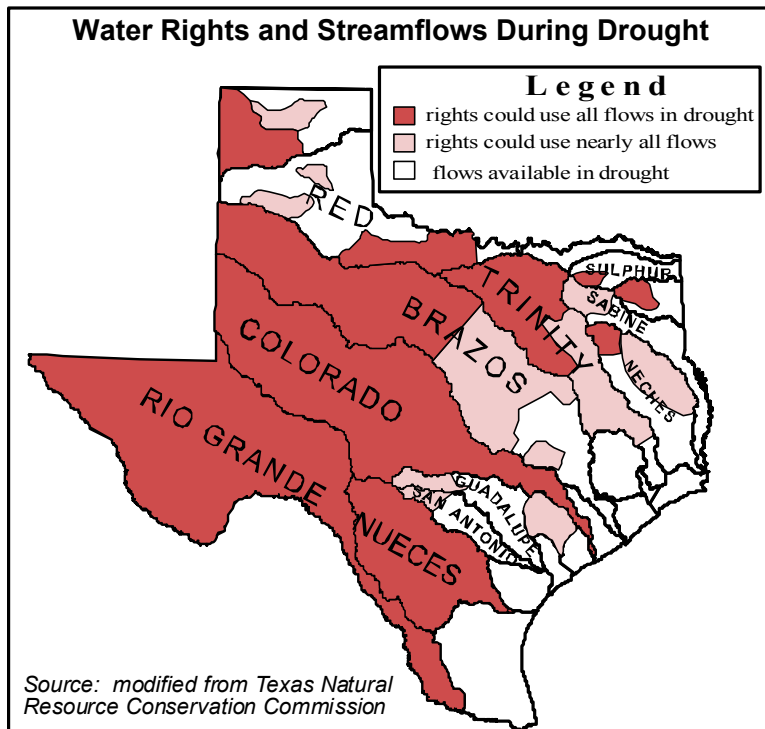




ENVIRONMENTAL FLOW PROTECTION - A QUESTION OF TEXAS HERITAGE

The amount of water needed in rivers, streams, and coastal bays to support fish and wildlife populations is commonly referred to as “environmental flows.” Protecting, maintaining, and in some instances restoring these flows is extremely important to segments of our state’s economy, particularly in rural areas. Flowing streams and productive coastal estuaries generate income from commercial and sport fishing, hunting, and tourism. These flows are also critical to our quality of life in Texas. Future Texans have the right to expect that we will pass on the flowing rivers and healthy bays and estuaries that are the lifeblood of a uniquely Texan fish and wildlife heritage.



In general, environmental flows are not protected under Texas laws and regulations. Some of our rivers and streams continue to flow today only because people who have rights to take water out have not fully exercised those rights, a situation that will likely change as our water demand grows. Until 1985, the state could issue water rights permits without any consideration of environmental flow protection.

With a 1985 change in state law, the Texas Natural Resource Conservation Commission (TNRCC) now considers the impacts to environmental flows on a case-by-case basis when it issues

new water rights permits and for some types of permit amendments. If it chooses, the TNRCC may impose conditions on these new water rights in order to maintain environmental flows. While new-permit conditions can minimize the extent to which existing flow problems are made worse, this case-by-case approach does nothing to correct problems caused by existing permits that include no such conditions. Relying solely on this approach creates a climate of uncertainty for everyone, including water rights applicants, about how environmental flow protection will be incorporated into eventual permits.



There is no single solution to this problem. The State needs a coherent and comprehensive program that relies on a combination of approaches. The key to success is acting proactively.

Where available, sufficient unappropriated water should be placed in the Texas Water Trust to support fish, wildlife, and associated economic activities.

For many streams, rivers, and bays in the eastern part of the state, sufficient unappropriated water (meaning water available after existing rights satisfied) may be available to meet most inland stream flow and coastal freshwater inflow needs. If the State acts now to ensure protection of these flows, future problems can be avoided and water projects can be developed with confidence that environmental flow issues have been addressed. To reach these goals, however, flows must be set aside through a definitive mechanism. The greatest certainty would be achieved by issuing instream flow rights that must be placed in the Texas Water Trust. Because the Trust is overseen by the state, this would ensure that environmental flow rights are issued and implemented in a way that is consistent with the public interest.

Where sufficient unappropriated water is not available, voluntary purchase for placement into the Texas Water Trust is needed.

In areas of the state where existing water rights authorize the diversion of most flows (or, in some cases, more flow than there is in the stream), more inventive approaches will be required. Although some unappropriated water might be available to serve as the basis for a new water right to be placed in the Trust, that likely would not be sufficient to meet environmental needs. Accordingly, on a voluntary basis, existing rights should be purchased by the state and converted to environmental flow purposes to be placed in the Texas Water Trust. Additional approaches could be used in some circumstances. One example would be to provide public funds to assist with water conservation activities with the conserved water being transferred into the Water Trust for environmental flow purposes. In other situations, holders of water rights might be willing to donate their rights to the Texas Water Trust or to private trusts for environmental flow protection, particularly if appropriate incentives can be provided.

Dedicated funding is needed to finance the voluntary purchase of existing rights and the enforcement of environmental flow rights and permit conditions.

A dedicated funding source, possibly based on a surface water use fee, would be needed to provide the necessary funding for an environmental flow program. A portion of that fee also would be needed to support enforcement of environmental flow rights and permit conditions.

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