

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST**

AGENDA REQUESTED: September 4, 2013

**NAME & NUMBER OF PERSON TO CONTACT REGARDING CHANGES TO
THIS REQUEST, IF NEEDED:**

Amy Settemeyer, (512) 239-2588
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**CONSIDERATION OF THE EXECUTIVE DIRECTOR'S FINDINGS AND
RECOMMENDATIONS ON WHETHER A WATERMASTER SHOULD BE
APPOINTED FOR THE TRINITY RIVER BASIN, THE TRINITY-SAN
JACINTO COASTAL BASIN, THE SAN JACINTO RIVER BASIN, OR THE
SAN JACINTO-BRAZOS COASTAL BASIN.** Texas Water Code, Section 11.326(g)
requires that in river basins where no watermaster has been appointed, the executive
director shall evaluate the river basin at least once every 5 years to determine whether a
watermaster should be appointed, and report the findings and make recommendations
to the commission. The commission shall include the findings and recommendations in
the commission's biennial report to the Legislature.

CHIEF CLERK MUST SEND NOTICE OF THE APPLICATION/HEARING: No

TYPE OF MATTER: Miscellaneous

COUNTY: Anderson, Archer, Brazoria, Chambers, Clay, Collin, Cooke, Dallas, Denton,
Ellis, Fannin, Fort Bend, Freestone, Galveston, Grayson, Grimes, Hardin, Harris,
Henderson, Hill, Hood, Houston, Hunt, Jack, Johnson, Kaufman, Leon, Liberty,
Limestone, Madison, Montague, Montgomery, Navarro, Parker, Polk, Rockwall, San
Jacinto, Tarrant, Trinity, Van Zandt, Walker, Waller, Wise, and Young

DOCKET NUMBER: 2013-1164-MIS

TCEQ Interoffice Memorandum

To: Commissioners

Thru: Bridget Bohac, Chief Clerk
Zak Covar, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Date: August 16, 2013

Subject: Evaluation of the Trinity River Basin, Trinity-San Jacinto Coastal Basin, San Jacinto River Basin, and San Jacinto-Brazos Coastal Basin for the Need of a Watermaster Program

Background

Section 5.05 of House Bill (HB) 2694 of the 82nd Legislature added the following language to Chapter 11, Subchapter G, §11.326(g)(h) of the Texas Water Code (TWC).

- (g) For a water basin in which a watermaster is not appointed, the executive director shall:
 - (1) evaluate the water basin at least once every five years to determine whether a watermaster should be appointed; and
 - (2) report the findings and make recommendations to the commission.
- (h) The commission shall:
 - (1) determine the criteria or risk factors to be considered in an evaluation under Subsection (g); and
 - (2) include the findings and recommendations under Subsection (g) in the commission's biennial report to the legislature.

In 2012, staff evaluated the Brazos River Basin, the Brazos-Colorado Coastal Basin, the Colorado River Basin, and the Colorado-Lavaca Coastal Basin, and in 2013, staff

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evaluated the Trinity River Basin, Trinity-San Jacinto Coastal Basin, San Jacinto River Basin and San Jacinto-Brazos Coastal Basin.

Current Practices

The TCEQ currently has three watermaster programs:

1. **Rio Grande**, which serves the Rio Grande Basin below Fort Quitman, Texas (excluding the Pecos and Devils Rivers),
2. **South Texas**, which serves the Nueces, San Antonio, Lavaca, and Guadalupe River Basins, as well as the adjacent coastal basins, and
3. **Concho River**, currently a division of the South Texas Watermaster, which serves the Concho River segment of the Colorado River Basin.

Watermasters and their staff protect water rights in accordance with the provisions of the TWC by analyzing and evaluating diversion and storage requests, authorizing appropriate diversion amounts and storage levels, and curtailing illegal diversions. They also provide real-time monitoring of streamflows and mediate conflicts and disputes among water users. Watermasters are able to allocate available water according to water right priorities on a real-time operational basis. The authority provided in TWC § 11.327, allows the watermaster to manage surface water resources in a way that protects senior and superior rights while balancing the needs of all water right holders under their jurisdiction.

The TCEQ is responsible for protection of senior and superior water rights, regardless of whether a watermaster program has been established in the affected area. In the absence of a watermaster program, the TCEQ uses existing staff resources to address water right issues as they arise.

TWC, Chapter 11 provides three mechanisms by which a watermaster program can be established:

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1. The ED may appoint a watermaster to an established water division.
2. A watermaster may be court-appointed.
3. Upon receipt of a petition of 25 or more water right holders in a river basin or segment of a river basin, or on its own motion, the Commission may appoint a watermaster if the commission finds that senior water rights have been threatened.

Who pays for a watermaster program?

Permitted water right holders pay the fees for watermaster programs. While those domestic and livestock (D&L) users exempt from permitting are considered superior rights and may make a priority call on other water right holders, these D&L users do not pay watermaster program fees.

Differences in water rights management in non-watermaster areas compared to watermaster areas

In watermaster areas, the TCEQ generally manages water rights proactively; and in non-watermaster areas has historically managed water rights based on complaints. Office of Water (OW) has worked with Office of Compliance and Enforcement (OCE) and Office of Legal Service (OLS) to develop a new process (Attachment A) that established a “Drought Response Task Force” to respond to priority calls. The goal is to respond within 10 calendar days, with OW, OCE, and OLS working concurrently on the major elements, including technical analysis, legal review, and field investigations. This new task force is a subgroup of the well-established agency-wide drought team.

OCE has also developed a proactive surface water management process for areas outside a watermaster program. In an effort to improve responsiveness to potential impacts to surface water availability and to provide information critical for the agency’s evaluation and determination of priority calls in areas of the state outside the jurisdiction of a watermaster program, OCE conducts activities to promote more proactive water management. To accomplish this goal, OCE utilizes existing resources by acknowledging a connection between current regional water quality efforts and field observations to provide data necessary to address surface water availability.

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OCE's approach utilizes United States Geological Survey (USGS) data as well as Surface Water Quality Monitoring (SWQM) data to assist in determining impacts to flow trends. In addition, OCE has enhanced water right training for regional staff in order to add to staff's existing knowledge of water rights and water quantity management. By partnering with OW and SBEA, OCE will continue to expand its awareness of impacts to surface water availability, such as permitted industrial uses, agricultural irrigation trends, water reuse authorizations, and drought contingency planning for public water systems.

The key to successful proactive water management in the absence of a Watermaster Program is timely and accurate communication among multiple programs across the agency. By coordinating and communicating data currently captured for water quality, the agency can more efficiently address water right issues while minimizing impacts to resources required for continued success in meeting commitments and performance measures.

Day To Day Management of Water Rights:

<i>Non-Watermaster Areas</i>	<i>Watermaster Areas</i>
<p>1. <u>Normal Conditions:</u></p> <p>If there are no priority calls, OCE will respond to complaints:</p> <ul style="list-style-type: none">• conduct on-site assessments of river conditions;• review deed records to ensure property boundaries are known; and• as needed, review, take flow measurements, collect photographic evidence and field notes, and check USGS flow gages where available.	<p>1. <u>Normal Conditions:</u></p> <p>Proactive management of water rights:</p> <ul style="list-style-type: none">• hands-on day to day management by continuously monitoring streamflows, reservoir levels, and water use• as needed, monitoring usage downstream to ensure that any sold water that is released reaches the buyer• responding to requests from water users to divert water• determining whether a diversion will remove water that rightfully belongs to another user. If so, the watermaster notifies the user with lower priority to reduce pumping—or, if necessary, to stop pumping altogether.

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<p>2. <u>If Curtailments are in effect, OCE:</u></p> <ul style="list-style-type: none">• forms regional teams focused on curtailment compliance;• reviews water right permits in curtailment area;• performs on-site investigations to ensure compliance;• reviews USGS gages to follow the water;• as information is received, makes new assignments to address the most current river conditions; and• coordinates with sister agencies to conduct fly-overs to gather additional stream observations. <p>Under 30 TAC Chapter 36, in response to a priority call, the ED can request information on water use for public health and safety reasons from the owner of any water rights that are not suspended or adjusted.</p> <p>If a junior water right is not suspended or adjusted, the ED can request information on future planning and can also require a water right holder to implement water conservation and drought contingency plans at higher levels in order for non-suspended junior water rights to continue to divert.</p>	<p>2. <u>Drought or Low-Flow Conditions:</u></p> <p>When streamflows diminish, a watermaster allocates available water among the users according to priority dates.</p> <p>If a water right holder does not comply with the water right or with TCEQ rules, the ED may direct a watermaster to adjust the control works, including pumps, to prevent the owner from diverting, taking, storing, or distributing water until the water right holder complies.</p>
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Whether in normal conditions or in priority call conditions, OCE addresses potentially illegal diversions and may issue field citations or notices of violation and/or enforcement based on the nature of the violation(s). In areas where a watermaster is active, the watermaster receives daily information on diversions as water right holders are required to contact the watermaster prior to diversion. In addition, watermasters can require diversions to be metered. Watermasters conduct site investigations of permitted water rights diversions on a regular basis, and therefore know how much water a permittee has used as well as how much water is available.

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Evaluation of the Trinity, San Jacinto, Trinity-San Jacinto Coastal, and San Jacinto-Brazos Coastal Basins

Coordination of Agency Programs

- OW worked with OCE and OLS to create the letters and information that TCEQ provided to stakeholders prior to the five stakeholder meetings. This information was also included on the watermaster evaluation webpage.
- OW and OCE Region staff involved in water right investigations provided presentations at the stakeholder meetings on how water rights administration/enforcement works with and without a watermaster program.
- OW, OCE and OLS reviewed the 32 comments and all other information (costs, complaints, threats, etc.) received during the stakeholder process. Intergovernmental Relations (IGR), Agency Communications and SBEA were requested to provide support/input where necessary.

Action Plan for 2013 Evaluations

In the Commissioner's Work Session on September 28, 2011, the ED proposed a five-year schedule for evaluating basins. In accordance with the proposed schedule, the ED evaluated the following basins in Year 2 (calendar year 2013):

1. Trinity River Basin
2. Trinity-San Jacinto Coastal Basin
3. San Jacinto River Basin
4. San Jacinto-Brazos Coastal Basin

For the above basins, the Water Availability Division (WAD) considered the following criteria when evaluating a basin, based on the plan presented during the September 28, 2011 Work Session:

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1. *Is there a court order to create a watermaster?*

At this time, there are no court orders to appoint a watermaster for the basins under consideration.

2. *Has a petition been received requesting a watermaster?*

At this time, there are no active or approved petitions to appoint a watermaster for the basins under consideration.

3. *Have senior water rights been threatened, based on either the history of senior calls or water shortages within the basin or the number of water right complaints received on an annual basis in each basin?*

There is no history of threatened water rights or water shortages in these basins, other than certain cities being on watering restrictions due to enacting their drought contingency plans. However, the following complaints were received and investigations conducted in each basin.

Table 1. Summary of Complaints and Investigations Between FY 2010 and 2012

Basin	Fiscal Year					
	2010		2011		2012	
	Complaints	Investigations	Complaints	Investigations	Complaints	Investigations
Trinity	15	53*	12	59*	13	23
Trinity- San Jacinto	0	0	0	0	0	2
San Jacinto	0	7	3	10	8	9
San Jacinto-Brazos	0	1	0	1	0	1

* Includes county-specific initiatives not in response to complaints performed for these fiscal years.

The complaints and investigations listed above resulted in a total of ten notices of enforcement, seven field citations, and six notices of violation.

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Definition of Threatened Water Right

In 2004, the Commission issued an order in response to petitions in the Concho River watershed. During the September 13, 2012 work session, the Commission directed staff to utilize the definition of threatened water right from this 2004 Commission Order for the evaluation process. The language below was presented to the commission at the October 31, 2012 agenda, and the Commission approved the updated definition for use in the evaluations:

“Threat” to the rights of senior water rights holders as used in Chapter 11, Subchapter I, of the Water Code implies a set of circumstances creating the possibility that senior water rights holders may be unable to fully exercise their rights – not confined to situations in which other people or groups convey an actual intent to harm such rights. Specifically, in time of water shortage, the rights of senior water rights holders in the basin are threatened by the situation of less available water than appropriated water rights; the disregard of prior appropriation by junior water rights holders; the storage of water; and the diversion, taking, or use of water in excess of the quantities to which other holders of water rights are lawfully entitled.

Geographic Reach of River Basins

The Trinity River Basin includes all or a portion of 38 counties; the Trinity-San Jacinto Coastal Basin includes all or a portion of three (3) counties; the San Jacinto River Basin includes all or a portion of eight (8) counties; and the San Jacinto-Brazos Coastal Basin includes all or a portion of five (5) counties (Table 2). The following four options were considered during this evaluation. In **three of the four options, the WAD is recommending a watermaster program.**

- Option 1 would include all 4 basins and would include approximately 828 water right permits in the combined areas.

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- Option 2 would include only the Trinity River Basin and Trinity-San Jacinto Coastal Basin and would include management of approximately 641 water rights currently in the two basins.
- Option 3 would include only the San Jacinto River Basin and San Jacinto-Brazos Coastal Basin and would include approximately 187 water rights currently in the two basins.
- Option 4 would be the appointment of no watermaster in any of the basins evaluated.

If approved, the watermaster areas would not be limited to only those counties with currently permitted water rights, but would include all counties and portions of counties in the designated areas that are part of the watershed (Figures 1, 2 and 3).

Table 2. Geographic Reach of the Basins – List of Counties in Each Basin

<i>Trinity River Basin</i>		<i>Trinity-San Jacinto Coastal Basin</i>	<i>San Jacinto River Basin</i>	<i>San Jacinto-Brazos Coastal Basin</i>
Anderson	Johnson	Chambers*	Fort Bend*	Brazoria
Archer	Kaufman	Harris*	Grimes*	Fort Bend*
Chambers*	Leon	Liberty*	Harris*	Galveston
Collin	Liberty*		Liberty*	Harris*
Clay	Limestone		Montgomery	Waller*
Cooke	Madison		San Jacinto*	
Dallas	Montague		Walker*	
Denton	Navarro		Waller*	
Ellis	Parker			
Fannin	Polk			
Freestone	Rockwall			
Grayson	San Jacinto*			
Grimes*	Tarrant			
Hardin	Trinity			
Henderson	Van Zandt			
Hill	Walker*			
Hood	Wise			
Houston	Young			
Hunt				
Jack				
38 Counties		3 Counties	8 Counties	5 Counties

* Counties located in more than one basin.

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Number of Permitted Water Rights

Tables 3 through 6 summarize the number of permitted water rights in each basin and in each of the areas being considered for possible watermaster programs. The number of total water rights compared to the water rights by county may differ slightly as some permits are authorized in multiple counties.

Table 3. Number of Permitted Water Rights by Basin

	Trinity River	Trinity-San Jacinto Coastal	San Jacinto River	San Jacinto-Brazos Coastal	Total
No. of WR Permits	624	17	132	55	828

Note: Temporary permits issued by the Central and Regional Offices of the TCEQ were not considered during this evaluation since their number was insignificant and may fluctuate considerably during the evaluation period.

Table 4. Option 1: All Four Basins, Number of Permitted Water Rights by County

Number of permitted water rights in the subject area: 828

Total No. of Counties = 44

- 36 counties in the subject area currently have permitted water rights
- Counties with an asterisk (*) are located in more than one basin.

County Name	Number of WR Permits in County	County Name	Number of WR Permits in County
Anderson	26	Archer	0
Brazoria	43	Chambers*	6
Collin	54	Clay	0
Cooke	13	Dallas	102
Denton	52	Ellis	26
Fannin	0	Fort Bend*	9
Freestone	20	Galveston	6
Grayson	4	Grimes*	6
Hardin	0	Harris*	76
Henderson	33	Hill	6
Hood	0	Houston	25
Hunt	0	Jack	10
Johnson	9	Kaufman	19
Leon	14	Liberty*	36

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County Name	Number of WR Permits in County	County Name	Number of WR Permits in County
Limestone	1	Madison	2
Montague	6	Montgomery	57
Navarro	28	Parker	13
Polk	13	Rockwall	4
San Jacinto*	9	Tarrant	125
Trinity	5	Van Zandt	0
Walker*	15	Waller	3
Wise	24	Young	0

Table 5. Option 2: Trinity River and Trinity-San Jacinto Coastal Basins,
Number of Permitted Water Right by County

Number of permitted water rights in the subject area: 641

Total No. of Counties = 39

- 31 counties in the subject area currently have permitted water rights
- Counties with an asterisk (*) are located in more than one basin.

County Name	Number of WR Permits	County Name	Number of WR Permits
Anderson	26	Archer	0
Chambers*	6	Collin	54
Clay	0	Cooke	13
Dallas	102	Denton	52
Ellis	26	Fannin	0
Freestone	20	Grayson	4
Grimes*	3	Hardin	0
Harris	11	Henderson	33
Hill	6	Hood	0
Houston	25	Hunt	0
Jack	10	Johnson	9
Kaufman	19	Leon	14
Liberty*	33	Limestone	1
Madison	2	Montague	6
Navarro	28	Parker	13
Polk	13	Rockwall	4
San Jacinto*	9	Tarrant	125
Trinity	5	Van Zandt	0
Walker*	8	Wise	24
Young	0		

Table 6. Option 3: San Jacinto River and San Jacinto-Brazos Coastal Basins,
Number of Permitted Water Rights by County

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Number of permitted water rights in the subject area: 187

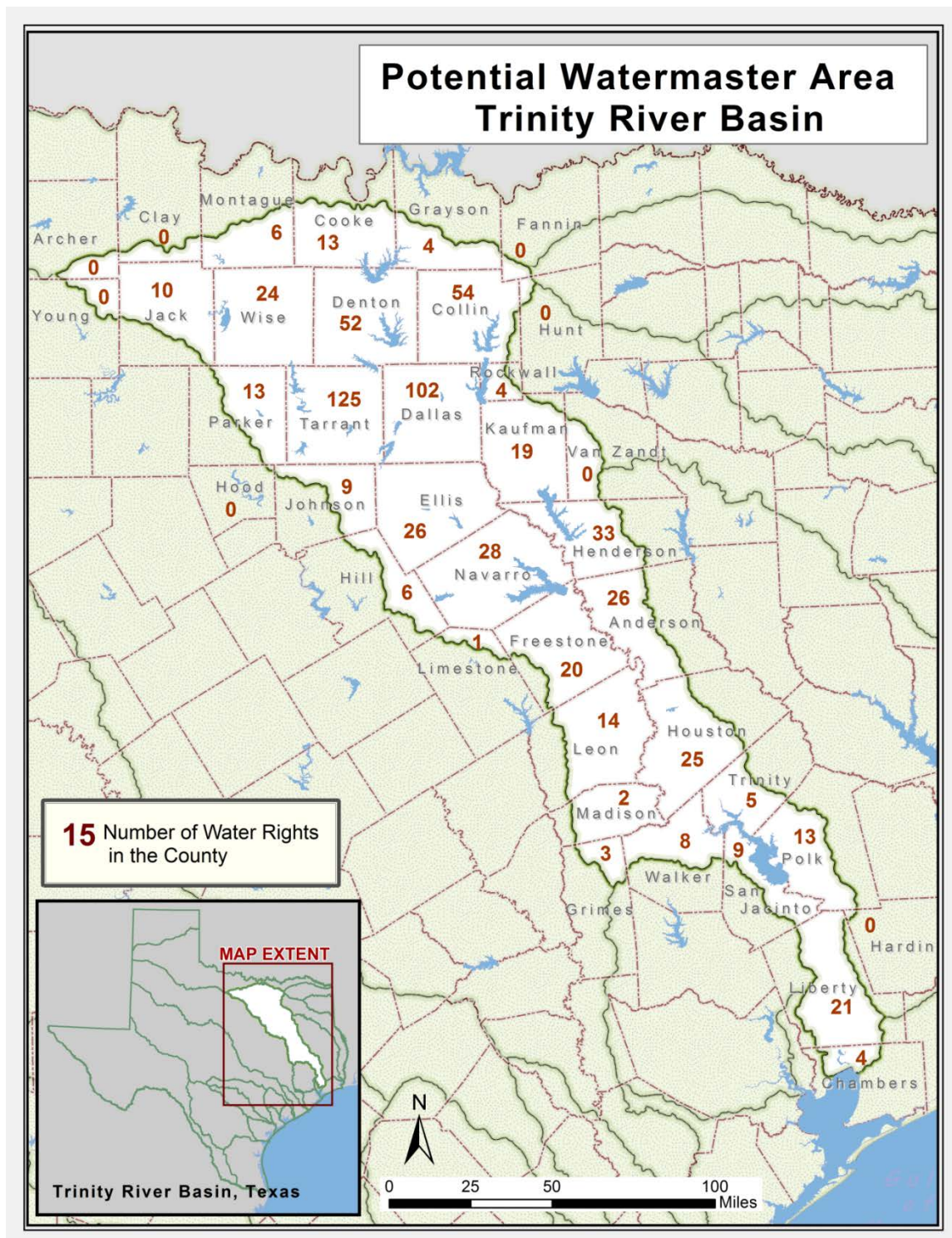
Total No. of Counties= 10

- 9 counties in the subject area currently have permitted Water Rights
- Counties with an asterisk (*) are located in more than one basin.

County Name	Number of WR permits
Brazoria	43
Fort Bend*	9
Galveston	6
Grimes*	3
Harris*	65
Liberty*	3
Montgomery	57
San Jacinto*	0
Walker*	7
Waller*	3

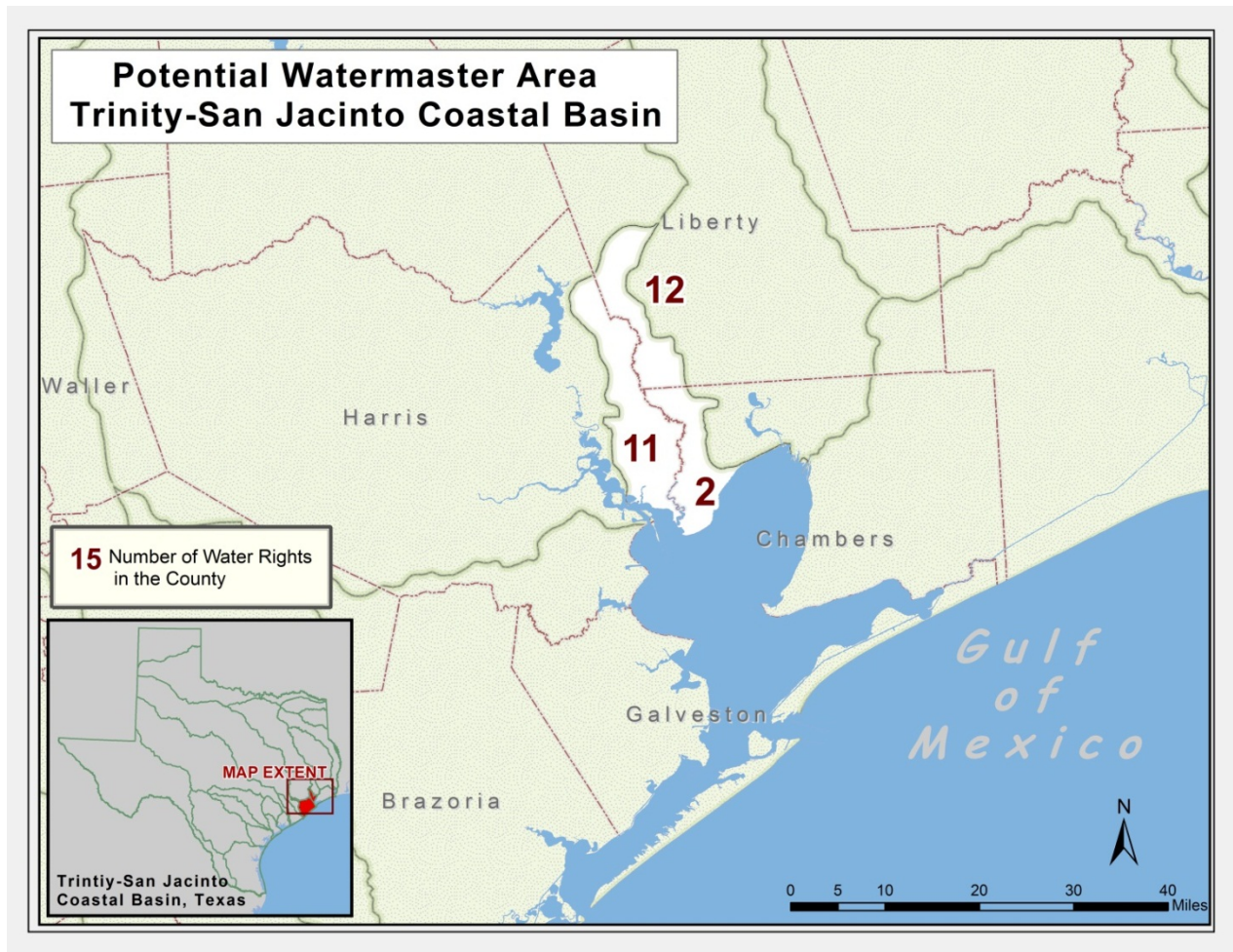
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Figure 1. Water Right Permits in the Trinity River Basin



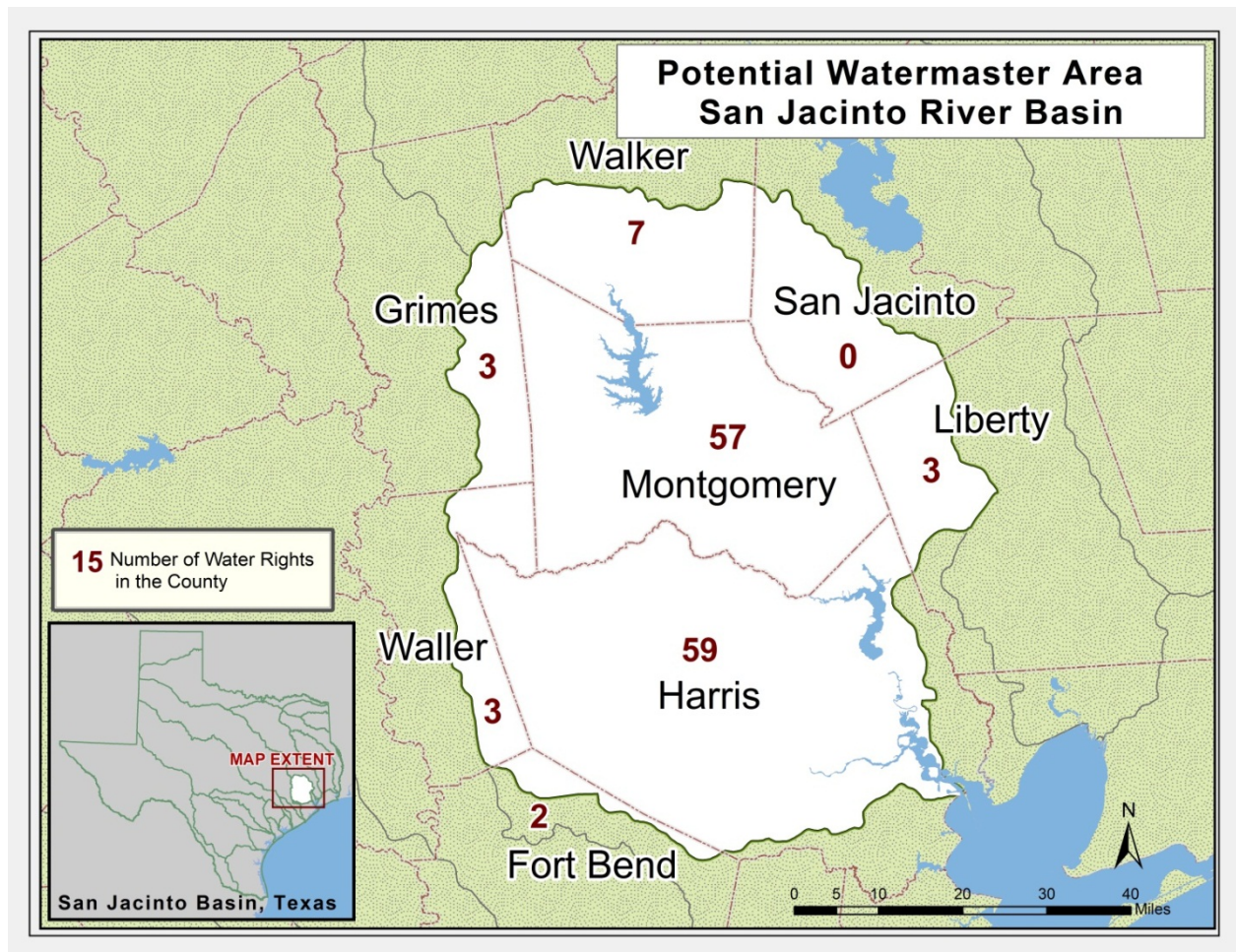
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Figure 2. Water Right Permits in the Trinity-San Jacinto Coastal Basin



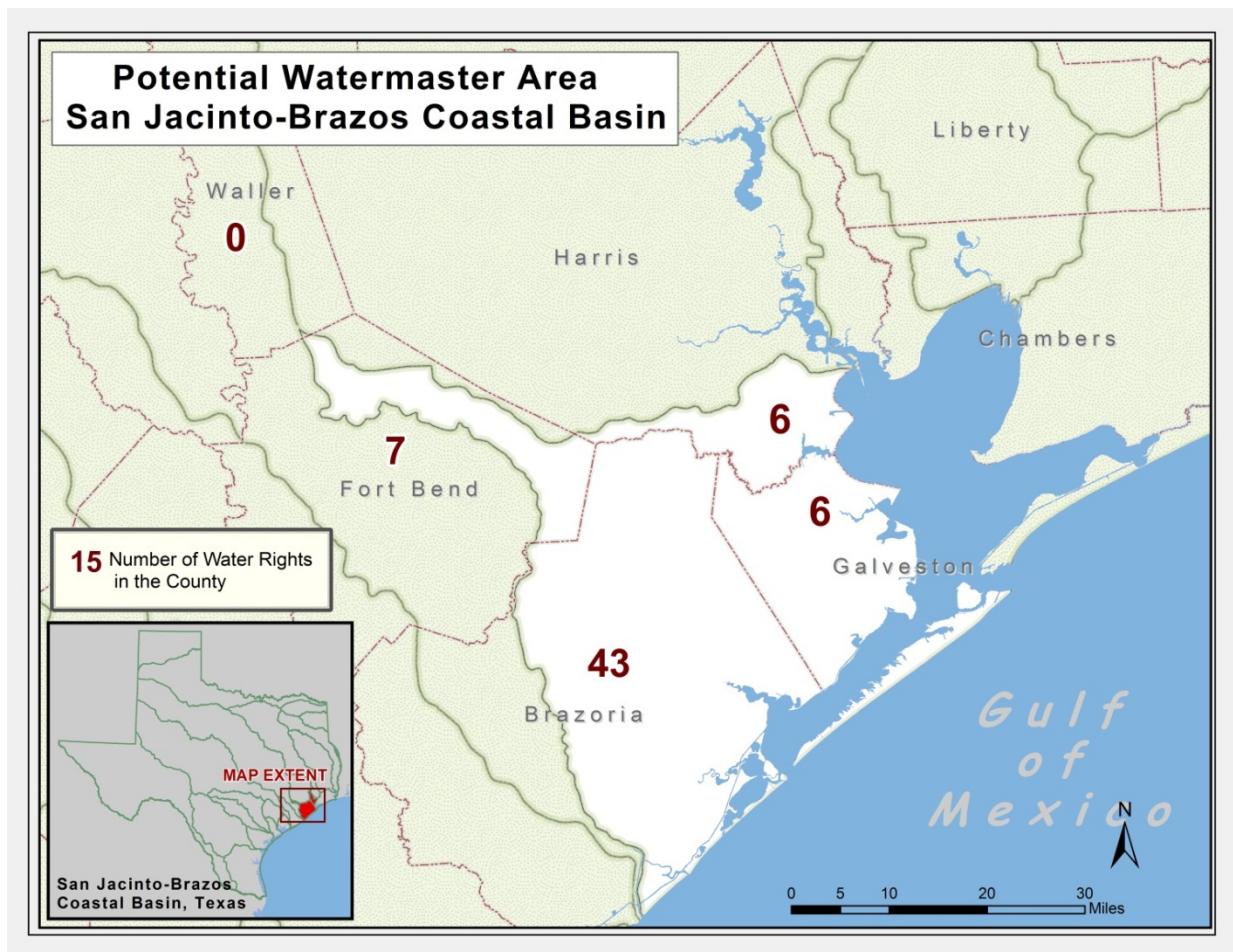
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Figure 3. Water Right Permits in the San Jacinto River Basin



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Figure 4. Water Right Permits in the San Jacinto-Brazos Coastal Basin



Interbasin Transfers

There are a number of permits that authorize interbasin transfers to the Trinity River Basin from river basins that are not being considered in this evaluation (Red, Sabine, Sulphur). They were included in the calculations in instances where the permit authorized a specific reach of the bed and banks of the Trinity River or its tributaries. There are also permits that authorize interbasin transfers from the Trinity River Basin to basins that are being considered in the evaluation (i.e. from the Trinity River Basin to the San Jacinto River Basin). These permits were appropriately considered in the calculations for both basins.

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Location of USGS Stream Flow Gages

Currently, there are 64 United States Geological Survey (USGS) stream flow gages in the Trinity River Basin, one in the Trinity-San Jacinto Coastal Basin, 60 in the San Jacinto River Basin and two in the San Jacinto-Brazos Coastal Basin.

Existence of River Compacts

There are five interstate river compacts in the state (Canadian River, Pecos River, Red River, Rio Grande, and Sabine River). Each of these compacts is a contract that allocates the water of that basin between the member states. None of these river compacts apply to the four basins being evaluated in 2013.

Environmental Flows

On April 20, 2011, the TCEQ adopted 30 Texas Administrative Code (TAC) §298, Environmental Flow Standards for Surface Water. Subchapter B of §298 includes the adopted environmental flow standards for the Trinity and San Jacinto Rivers, their associated coastal basins which drain to Galveston Bay, and Galveston Bay. The adopted standards apply to new appropriations to store, take, or divert water. Under 30 TAC §298.230, water rights for new appropriations of water in these basins will include permit special conditions that are adequate to protect the adopted standards. A watermaster in these basins would administer any permits or amendments subject to the environmental flow standards in the same way as they would administer any other water right that includes instream flow restrictions.

Summary of the Texas Water Development Board Regional Water Plans

Water planning in Texas starts at the regional level within 16 regional water planning groups (RPG). The RPGs adopt their regional water plans, which are then sent to the Texas Water Development Board (TWDB) for approval and incorporation into the State Water Plan (WP). The TWDB then adopts the State WP.

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The TWDB's current State WP was adopted on December 15, 2011 and sent to the Governor on January 5, 2012. The State is divided into Regional Water Planning Areas (RWPA) by county, thus each of the basins under study may lie in one or more RWPA.

The vast majority of the basins under review fall into Region C and Region H planning areas. However, there are also some RWPA that cover slight portions of these basins:

Trinity River Basin:

- Region B
- Region C
- Brazos (G)
- Region H and
- East Texas (I)

San Jacinto River Basin:

- Brazos (G) and
- Region H

Trinity-San Jacinto and San Jacinto-Brazos Coastal Basins:

- Region H

The State WP indicates that by the year 2060 available surface water supply within these regions will decrease and demands will increase significantly. The RPGs recommended a variety of conservation strategies such as education, pricing structure, water waste prohibitions, water system audits, plumbing code changes, landscape irrigation restrictions and residential water audits. Recommended strategies include efficient water utilization/water conservation, building new reservoirs, interbasin transfers, groundwater development, and water reuse.

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Stakeholder Involvement

Consistent with Commission direction to involve stakeholders in the evaluation process, staff:

1. Created a web page exclusively for the evaluation process, with an opportunity for stakeholders to receive automated updates by email.
2. Mailed out initial outreach letters to the stakeholders in each affected basin on March 1, 2013, and accepted comments until April 05, 2013. Stakeholders include all water right holders, county judges, extension agents, river authorities, agricultural interests, industries, environmental organizations, and other interested parties in the basin.
3. Between May 21, 2013 and June 04, 2013, five stakeholder meetings were held in Fort Worth, Corsicana, Conroe, Houston and Liberty. Final stakeholder comments were due on June 14, 2013. A total of 32 people attended the meetings.

Breakdown of the Comments Received During the Stakeholder Process

The following table provides information on all of the comments received during the evaluation process.

Table 7. Comments Received

	Trinity			Trinity-San Jacinto			San Jacinto			San Jacinto-Brazos			Total¹		
	WRH	Others ²	Total	WRH	Others ²	Total	WRH	Others ²	Total	WRH	Others ²	Total	WRH	Others ²	Total
In Favor	0	0	0	0	0	0	0	0	0	0	2	2	0	3*	3
Opposed	11	6	17	2	0	2	2	0	2	2	0	2	18**	7	25
Neutral	1	1	2	0	0	0	1	1	2	0	0	0	2	2	4
Total	12	7	19	2	0	2	3	1	4	2	2	4	20**	10*	32

¹ 17 letters, 11 emails, and 4 both letter and email

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² “Others” include County Judges and Interested Parties

* Includes a basins-wide comment from Sierra Club

** Includes a basins-wide joint comment from City of Dallas, City of Houston, TRA, NTMWD, TRWD, and SJRA

Cost Estimates for Evaluation Activities

Total TCEQ Evaluation Activity Costs: \$108,389.93

Office of Water

The estimated cost to conduct the evaluation is approximately \$105,831.01. This includes salary, fringe, postage, and travel, with the following breakdown:

- Staff time: \$103,262.01
 - Eleven staff participated in this evaluation for a portion of their time, equating to 2.0 FTEs.
 - Calculated salaries and fringe for 2.0 FTEs from December 2012 through August 2013 (9 months).
 - Assumed mid-level B19+Fringe (29.74% of base salary).
- Postage: \$879.00
- Travel: \$1,690.00
- **Total: \$105,831.01**

Office of Legal Services

- OLS staff time: \$140.00
- Assumed one attorney at 3 hours, mid-level B25 salary + Fringe (29.741% of base salary).
- **Total: \$140.00**

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Office of Compliance and Enforcement

- OCE staff time: \$2,188.88
 - Calculated regular labor plus travel time of 64.5 hours
- State equipment use (vehicle): \$230.00
- **Total: \$2,418.88**

Other Agency Programs

Other agency staff were provided an opportunity to participate, but no significant costs were associated with their involvement.

Cost Estimates to Implement New Programs

Four options were considered in the assessment of costs:

- Option 1 would include all four basins, with an estimated cost to implement of \$548,692.85 for Year 1 and \$403,770.59 for consecutive years.
- Option 2 would include only the Trinity River Basin and Trinity-San Jacinto Coastal Basin, with an estimated cost to implement of \$456,566.00 for Year 1 and \$339,438.73 for consecutive years.
- Option 3 would include only the San Jacinto River Basin and San Jacinto-Brazos Coastal Basin, with an estimated cost to implement of \$225,703.40 for Year 1 and \$163,638.72 for consecutive years.
- Option 4 would be no watermaster program.

See Attachment B for estimated cost breakdowns for each of the options.

Cost Differences Summary

It is difficult to establish the cost benefits of having a watermaster vs. not having one as there are differences in the benefits provided under each program. Staff took a historical view of the last three years. The following tables show the agency's costs associated to

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managing water rights outside a watermaster area, the costs for having a watermaster for the entire basin, and the differences between a watermaster and a non-watermaster area. For smaller geographical areas, these costs would be reduced.

Table 8. Water Rights Management Cost Outside of Watermaster Areas

The costs in the table below only includes OCE costs to respond to complaints and conduct investigations.

Year	Trinity River Basin	Trinity-San Jacinto Coastal Basin	San Jacinto River Basin	San Jacinto - Brazos Coastal Basin	Total Cost
2010	\$20,255	\$0	\$2,537	\$362	\$23,154
2011	\$21,705	\$0	\$3,624	\$362	\$25,691
2012	\$8,337	\$724	\$3,262	\$362	\$12,685

Table 9. Estimated Water Rights Management Costs for Possible Watermaster Areas

Year*	COST ESTIMATE		
	Option 1: All Four Basins	Option 2: Trinity River Basin and Trinity-San Jacinto Coastal Basin	Option 3: San Jacinto River Basin And San Jacinto-Brazos Coastal Basin
2010	\$403,770.59	\$339,438.73	\$163,638.72
2011	\$403,770.59	\$339,438.73	\$163,638.72
2012	\$403,770.59	\$339,438.73	\$163,638.72

**The past dates indicate what a watermaster program might have cost had a program been in place, using estimates provided to stakeholders. These costs are for established watermaster programs after the first year start-up costs.*

Additional Information

Water Use Data

The Water Code, § 11.031, requires each water right holder to report annual use of water by March 1 of the year following the use. Failure to submit water use reports may result in water right cancellation proceedings under TWC, § 11.174.

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Staff mails letters to every water right holder in early January with information on these requirements. Beginning in reporting year 2011, WAD staff also mails follow-up letters to those who have not submitted their reports by the March 1 deadline.

WAD staff reviewed water use reporting data for previous years and determined that approximately 60% of the water use reports outside of watermaster areas had historically been returned completed. Because this information is used for various purposes in the administration of water rights, including responses to priority calls during a drought, it is important to have more complete data. OW has developed and is implementing a water use data collection process described below to further increase responses. Following implementation of some of these efforts, the response rate has already increased by approximately 10-15% for the 2011 and 2012 water use years.

Under TWC, § 11.031(b), the penalty for failing to file an annual report with the TCEQ had previously been \$25, plus \$1 per day for each day after the due date of March 1, to a maximum of \$150. In the 83rd legislative session House Bill (HB) 2615 was adopted, signed into law by the Governor and is effective as of September 1, 2013. HB 2615 modifies the TWC, §11.031 to increase penalties on persons who fail to timely report water use or who do not comply with the request after the applicable deadline. The maximum penalties under the revised statute are \$100 per day if the person is the holder of a water right authorizing the appropriation of 5,000 acre-feet or less per year; or \$500 per day if the person is the holder of a water right authorizing the appropriation of more than 5,000 acre-feet per year. We anticipate that this change will increase compliance for timely submittals of water use reports.

Water Use Data Collection Process

To further help increase the response rate for reporting water use, OW has developed an approach that emphasizes finding non-reporters and fixing problems as they are discovered. This approach includes the following steps:

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1. OW will send a letter to water right holders who did not submit a water use report by the March 1 deadline each year. The letter will explain the applicable statutes and penalties for non-compliance. OW will include blank water use reports with the letter as well as tips for completing the reports.
2. OW is working with Small Business and Environmental Assistance (SBEA) to develop an outreach strategy to find and correct issues:
 - SBEA has developed a reminder post card, which was mailed in February 2013 for the 2012 water use reporting year. This post card can also be used as a hand out for other stakeholders such as extension agents or agency employees.
 - SBEA communicates information to other stakeholders such as irrigation associations, county extension agents, and local governments to provide information on the reporting requirements and provide assistance to irrigators. For the 2012 reporting year, SBEA wrote an article on water rights and irrigation, and sent it to several associations and other irrigation stakeholders for their use.
 - In 2013, SBEA attempted to identify new contact information for municipal/domestic and irrigation non-reporters and encourage them to complete change of ownership, abandonment, or water-use report forms. Initiatives to contact these non-reporters required extensive resources and time, considering phone numbers are not provided for water right holders, and many of these non-reporters have moved, sold their property, and/or died.
 - With participants in the Mickey Leland Internship Program, SBEA continues to identify contact information for non-reporters through central file records and WestLaw PeopleMap searches.
3. After the outreach is completed and water use reports are due, OW will continue to send a follow-up letter to each WR holder who has not responded.
4. Following the completion of these efforts to correct reporting data and improve the response rate, OCE will initiate proper enforcement action on water right holders

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who continue to fail to report water use. The enforcement strategy will be as follows:

- OW will identify non-reporters who did not respond to initial efforts by the specified timeframe; and
- OCE will initiate proper enforcement action as warranted through Notices of Violation.

OCE has already started checking for water use reports in response to priority calls and taking appropriate action if a problem exists.

Information on Petitions for a Watermaster

At this time, there are no active or approved petitions to appoint a watermaster for the basins under consideration.

Who can petition?

Under TWC, Chapter 11, Subchapter I, 25 or more holders of water rights in a river basin or segment of a river basin may submit a petition requesting that a watermaster be appointed.

Water Divisions/Creation of a Water Division

Statutory and Regulatory Authority

Tex. Water Code Section 11.325 provides that the commission shall divide adjudicated segments or river basins into water divisions. The commission must find that the divisions would secure the best protection to the holders of water rights and the most economical supervision on the part of the state. However, there are no statutory provisions setting out the process for creating these water divisions. In addition, the Commission has not adopted procedural rules for creating water divisions.

Prior Water Divisions

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The Commission has created two water divisions under this statutory authority. The South Texas Water Division was created by order dated July 12, 1988. The Colorado-Lavaca Water Division was created by order dated January 12, 1990.

Potential Process

The Executive Director could file a petition with the Chief Clerk requesting the Commission to create one or more water divisions in the state. The petition could then be considered at Commission agenda. Alternatively, the Commission, on its own motion, could direct the General Counsel to set an item on the agenda for the creation of a water division.

Seven-day notice of the Agenda item to consider the water division would be given under the Open Meetings Act. No formal notice (other than Open Meetings Act notice) or contested case hearing is required for creation of a water division or appointment of a watermaster under Chapter 11, Subchapter G of the Water Code. However, notice to the water right holders in the proposed division could be provided.

At the Agenda meeting, the Commission could approve an Order creating a water division upon finding that the area has been adjudicated and that the division would secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

Executive Director's Recommendation

As detailed in this document, the ED evaluated three main criteria for establishment of a watermaster. With no court orders or petitions to create a watermaster, or history of threatened water rights, **the ED recommends that the Commission not move forward on its own motion with the creation of a watermaster program in either basin area.**

While the statute requires the agency to evaluate the need for a watermaster in those basins without a watermaster program at least every five years, there is no prohibition

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against evaluating a basin sooner on an as needed basis. The ED can review this decision and evaluate additional threats to senior water rights as they occur and also consider area stakeholder input. It is important to have stakeholder support in articulating the threat and the need to establish a new program as stakeholders will be responsible for paying a new fee to support the new regulatory program.

As stated above, the ED is always open to any additional information stakeholders may want to provide and 25 water right holders may petition the agency at any point to consider creation a watermaster program. Once a petition from 25 water right holders is received, the Commission will refer the issue to the State Office of Administrative Hearings for a complete administrative hearing and recommendation to the Commissioners for consideration.

Water Right Priority Calls

Response to a water right priority call is the highest priority for the Drought Response Task Force involved in the process.

Drought Response Task Force

In order to provide the best possible response to drought conditions that continue to persist state-wide and facilitate response to water right priority calls, the agency is creating the Drought Response Task Force. This is a separate subgroup of the agency-wide drought meeting. This subgroup (also multi-office) is comprised of the agency's "go-to" staff with water rights expertise and is focused solely on responding to priority calls.

Executive Sponsors/Co-chairs: L'Oreal Stepney and Ramiro Garcia

Other Members: Kellye Rila, Ron Ellis, Randy Ammons, Susan Jablonski, Kelly Keel, David Ramirez, Caroline Sweeney, Robert Martinez, Kathleen Decker, Robin Smith, and Isaac Jackson.

Meeting Schedule: Meetings of the Task Force will be on Tuesdays at 3:00 p.m.

Water Right Priority Call - Response Process Timeline

The total response timeframe has a goal of 10 calendar days – steps should be completed faster when possible.

Priority Call Review Steps	Calendar days
1. OCE Receives Priority Call and is Distributed to Exec, OW, IGR, SBEA, OLS and Media Relations	Immediately
2. Concurrently, OW begins review with OCE initiating investigation, and results sent to OW/OLS	No more than 7 days
3. OW completes preliminary recommendation along with draft letters. 4. OLS will prepare draft order including working with OGC to expedite agenda setting.	No more than 2 days
5. OW, OCE, OLS, and IGR meet to discuss preliminary recommendation. Then meet with ED/DED and a decision is made on priority call response. Signature and IGR notifications to follow.	No more than 1 day

Water Right Priority Calls - Response Process

Each of the steps below will be prioritized and expedited.

1. **Priority Call Received:** Priority calls are received by the Office of Compliance and Enforcement (OCE). Upon receipt of a call, OCE immediately informs: Exec, OW, IGR, SBEA, OLS, and Media Relations. OCE will immediately request responses to priority call questionnaire (which can be done through email or direct discussion between investigator and person making the senior call). Upon receipt, OCE immediately forwards questionnaire responses to OW and OLS.
2. **Expedited Programmatic Evaluations** (*No more than 7 cal. days*):
 - *Permit Review (7 cal. days – **concurrent** with Field Investigation)*: OW reviews the following:
 - drought and emergency shortage of water criteria in Chapter 36 to make assessment;
 - water right permits to identify affected permits and any special conditions effecting the call;
 - GIS tools to identify the geographic scope; creates maps of permits and reservoirs;
 - water use data, watershed information such as drainage area and losses, reservoir information, and area-specific issues;
 - any power or municipal water rights that may be affected by the call; and
 - prepares draft letter to senior water right holder(s), affected water right holders, juniors not curtailed if applicable, and any other notifications.
 - *Field Investigation (5 cal. days – **concurrent** with Permit Review)*: Within 24 hours, OCE begins an investigation of on the ground conditions at the location of the priority call and upstream locations where stream access is immediately accessible. Receiving timely consent to access property is critical for completion of the task. OLS is available to pursue administrative search warrant (civil-not criminal) to assist in gaining access. OCE sends the results and photographs of the field investigation to OW and OLS when completed.
3. **Preliminary Recommendation** (*No more than 2 cal. days*): OW reviews investigation results and completes a preliminary recommendation. OW sends the preliminary recommendation to OCE, OLS, and IGR for review and comment. OLS prepares a draft order, if applicable, and sends copy to OW. OLS coordinates with OGC to expedite setting an agenda date and drafts the hearing notice. Media Relations prepares a draft press release if needed. If a priority call is not substantiated, OCE will conduct a complaint investigation. OCE has reduced the water rights complaint investigation timeframe from 30 days to 10 days.
4. **Finalization of Recommendation** (*No more than 1 cal. day*): OW, OCE, OLS, and IGR will meet to discuss and finalize the preliminary recommendation. Representatives of the Drought Response Task Force will meet with the ED and DED to discuss the preliminary recommendation during the same day, if possible. ED makes final decision on the priority call, signs letter/issues order (if applicable).
5. **Notifications**
 - Signed ED letters/orders are provided to IGR. IGR notifies state and local leadership, state agencies, agriculture extension agents, and county judges.
 - Media Relations issues press release and updates the TCEQ Drought Webpage with copies of all letters/notifications.
 - *Water Right Owner Notification*: OW mails letters.
6. **Enforcement (on-going)**: OCE follows up with enforcement of suspensions/adjustments and with senior water right holder.
7. **Agenda**: OW, OCE, OLS participate in agenda to discuss suspension or adjustment if they occur under Chapter 36

Attachment B – Cost Estimate

Option 1 Cost Estimate: Trinity and San Jacinto Combined Area

Includes Entire Trinity / San Jacinto / Coastal Basins

	Year 1	Year 2	Basis
Base Salaries			
<i>Program Supervisor III - Watermaster</i>	\$57,468.93	\$59,422.87	1 Watermaster (Program Supervisor III) – Pay Group B19 (above mid-point of range) with 3.4% merit increase in year 2.
<i>Administrative Assistant II</i>	\$25,132.00	\$25,986.49	1 Administrative Assistant II, Pay Group A11 (entry point of range) - \$25,132/year with 3.4% increase by year 2.
<i>Watermaster Specialist I</i>	\$126,916.00	\$131,231.14	4 Watermaster Specialists, Pay Group B15 (entry point of range, \$31,729 each FTE) with 3.4% merit increase for each FTE by year 2.
Total Base Salaries	\$209,516.93	\$216,640.50	6 FTEs
Fringe	\$62,310.33	\$64,428.89	29.74% of the base salary, based on table of standard costs for new FTEs
SORM fee	\$900.00	\$900.00	Estimate \$150 per FTE based on existing programs' average
SWCAP fee	\$1,800.00	\$1,800.00	Estimate \$300 per FTE based on existing programs' average
Professional/Temporary Services	\$35,000.00	\$28,000.00	TXWAS development and maintenance – estimate 25% of full time TXWAS contractor first year, 20% thereafter
Travel In-State	\$12,000.00	\$12,000.00	Used table of standard costs for new FTEs* (\$2,000.00 per FTE)
Training	\$1,047.58	\$1,083.20	Used table of standard costs for new FTEs (\$0.5% of base salaries)
Rent – Building	\$22,500.00	\$22,500.00	Assumed 5 staff in D/FW regional office and 1 in Houston regional office, using OAS estimates of 1,500 square feet at \$15/square foot.
Other Operating Expenses (phone/utilities, supplies – consumables, rent – machine and other, postage)	\$15,918.00	\$15,918.00	Used table of standard costs for new FTEs (\$2,653.00 per FTE).
Fuels/Lubricants	\$22,500.00	\$22,500.00	Estimate \$4,500 per vehicle
Facilities, Furniture, & Equipment	\$18,000.00	\$18,000.00	Used table of standard costs (\$3,000.00 per FTE)
LAR - IT	\$7,200.00	\$0.00	Used table of standard costs for new FTEs (\$1,200.00 per FTE)
LAR - Vehicles	\$140,000.00	\$0.00	5 vehicles (four-wheel drive trucks) @ \$28,000 each
TOTAL:	\$548,692.85	\$403,770.59	

*Resources:

TCEQ's FY13 table of standard costs for FTEs (used regional

costs): http://home.tceq.texas.gov/internal/admin/budget/docs/standard_fte_costs.pdf

Attachment B – Cost Estimate

Option 2 Cost Estimate: Trinity Area

Includes the Trinity River Basin and Trinity-San Jacinto Coastal Basin

	Year 1	Year 2	Basis
Base Salaries			
<i>Program Supervisor III (middle of ladder) - Watermaster</i>	\$57,468.93	\$59,422.87	1 Watermaster (Program Supervisor) – Pay Group B19 (above mid-point of range) with 3.4% merit increase in year 2.
<i>Administrative Assistant II</i>	\$25,132.00	\$25,986.49	1 Administrative Assistant II, Pay Group A11 (entry point of range) - \$25,132/year with 3.4% increase by year 2.
<i>Watermaster Specialist I</i>	\$95,187.00	\$98,423.36	3 Watermaster Specialists, Pay Group B15 (entry point of range, \$31,729 each FTE) with 3.4% merit increase for each FTE by year 2.
Total Base Salaries	\$177,787.93	\$183,832.72	5 FTEs
Fringe	\$52,874.13	\$54,671.85	29.74% of the base salary using table of standard costs for new FTEs*
SORM fee	\$750.00	\$750.00	Estimate \$150 per FTE based on existing programs' average
SWCAP fee	\$1,500.00	\$1,500.00	Estimate \$300 per FTE based on existing programs' average
Professional/Temporary Services	\$35,000.00	\$28,000.00	TXWAS development and maintenance – estimate 25% of full time TXWAS contractor for first year; 20% thereafter.
Travel In-State	\$10,000.00	\$10,000.00	Used table of standard costs for new FTEs (\$2,000.00 per FTE)
Training	\$888.94	\$919.16	Used table of standard costs for new FTEs (0.5% of base salaries)
Rent – Building	\$13,500.00	\$13,500.00	Assumed 5 staff in D/FW regional office and used OAS estimates of 900 square feet at \$15/square foot.
Other Operating Expenses (phone/utilities, supplies – consumables, rent – machine and other, postage)	\$13,265.00	\$13,265.00	Used table of standard costs for new FTEs (\$2,653.00 per FTE).
Fuels/Lubricants	\$18,000.00	\$18,000.00	Estimate \$4,500 per vehicle
Facilities, Furniture, & Equipment	\$15,000.00	\$15,000.00	Used table of standard costs for new FTEs (\$3,000.00 per FTE)
LAR - IT	\$6,000.00	\$0.00	Used table of standard costs for new FTEs (\$1,200.00 per FTE)
LAR - Vehicles	\$112,000.00	\$0.00	4 vehicles (four-wheel drive trucks) @ \$28,000 each
TOTAL:	\$456,566.00	\$339,438.73	

*Resources:

TCEQ's FY13 table of standard costs for FTEs (used regional

costs): http://home.tceq.texas.gov/internal/admin/budget/docs/standard_fte_costs.pdf

Attachment B – Cost Estimate

Option 3 Cost Estimate: San Jacinto Area

Includes the San Jacinto River Basin and the San Jacinto-Brazos Coastal Basin

	Year 1	Year 2	Basis
Base Salaries			
<i>Program Supervisor III - Watermaster</i>	\$43,591.49	\$45,073.60	1 Watermaster (Program Supervisor) – Pay Group B19 (lower part of range) with 3.4% merit increase in year 2.
<i>Watermaster Specialist I</i>	\$31,729.00	\$32,807.79	1 Watermaster Specialist, Pay Group B15 (entry point of range) with 3.4% merit increase in year 2.
Total Base Salaries	\$75,320.49	\$77,881.38	2 FTEs
Fringe	\$22,400.31	\$23,161.92	29.74% of the base salary using table of standard costs for new FTEs*
SORM fee	\$300.00	\$300.00	Estimate \$150 per FTE based on existing programs' average
SWCAP fee	\$600.00	\$600.00	Estimate \$300 per FTE based on existing programs' average
Professional/Temporary Services	\$35,000.00	\$28,000.00	TXWAS development and maintenance – estimate 20% of full time TXWAS contractor for first year; 10% thereafter.
Travel In-State	\$4,000.00	\$4,000.00	Used table of standard costs for new FTEs (\$2,000.00 per FTE)
Training	\$376.60	\$389.41	Used table of standard costs for new FTEs (0.5% of base salaries)
Rent – Building	\$9,000.00	\$9,000.00	Assumed 2 staff in Houston regional office and used OAS estimates of 600 square feet at \$15/square foot.
Other Operating Expenses (phone/utilities, supplies – consumables, rent – machine and other, postage)	\$5,306.00	\$5,306.00	Used table of standard costs for new FTEs (\$2,653.00 per FTE).
Fuels/Lubricants	\$9,000.00	\$9,000.00	Estimate \$4,500 per vehicle
Facilities, Furniture, & Equipment	\$6,000.00	\$6,000.00	Used table of standard costs for new FTEs (\$3,000.00 per FTE)
LAR - IT	\$2,400.00	\$0.00	Used table of standard costs for new FTEs (\$1,200.00 per FTE)
LAR - Vehicles	\$56,000.00	\$0.00	2 vehicles (four-wheel drive trucks) @ \$28,000 each
TOTAL:	\$225,703.40	\$163,638.72	

*Resources:

TCEQ's FY13 table of standard costs for FTEs (used regional costs): http://home.tceq.texas.gov/internal/admin/budget/docs/standard_fte_costs.pdf