

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

AGENDA REQUESTED: August 20, 2014

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

Amy Settemeyer, (512) 239-2588
Kellye Rila, (512) 239-4612

**CONSIDERATION OF THE EXECUTIVE DIRECTOR'S FINDINGS AND
RECOMMENDATIONS ON WHETHER A WATERMASTER SHOULD BE
APPOINTED FOR THE SABINE RIVER BASIN, THE NECHES RIVER
BASIN, OR THE NECHES-TRINITY 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, Angelina, Chambers, Cherokee, Collin, Franklin, Galveston,
Gregg, Hardin, Harrison, Henderson, Houston, Hopkins, Hunt, Jasper, Jefferson,
Kaufman, Liberty, Nacogdoches, Newton, Orange, Panola, Polk, Rains, Rockwall, Rusk,
Sabine, San Augustine, Shelby, Smith, Trinity, Tyler, Upshur, Van Zandt, and Wood

DOCKET NUMBER: 2014-0924-MIS

TCEQ Interoffice Memorandum

To: Commissioners

Thru: Bridget Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

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

Date: August 1, 2014

Subject: Evaluation of the Sabine River Basin, Neches River Basin, and Neches-Trinity 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) and (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 evaluated the Trinity River Basin, Trinity-San Jacinto Coastal Basin, San Jacinto River Basin and San Jacinto-Brazos Coastal Basin. For 2014, staff is evaluating the Sabine River Basin, Neches River Basin, and Neches-Trinity Coastal Basin.

TCEQ Interoffice Memorandum

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:

1. The ED may appoint a watermaster to an established water division.
2. A watermaster may be court-appointed.

TCEQ Interoffice Memorandum

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 between non-watermaster areas and watermaster areas

1. Day-to-day water rights management

In Watermaster Areas

Watermasters proactively manage water rights in their areas by continuously monitoring streamflows, reservoir levels, and water use on a real-time basis.

Watermasters allocate water between water right holders on the basis of priority and maximize beneficial use of water. Watermaster staff monitors downstream water usage as needed to ensure that any sold water that is released reaches the buyer.

Before diverting water in a watermaster area, a water right holder must notify the watermaster regarding how much water they plan to divert. After receiving a declaration of intent to divert water, the watermaster determines 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.

Some of the day-to-day activities of watermaster staff include: conducting river surveillance, taking stream flow measurements, setting stream flow markers, meeting with water right holders and other interested persons, investigating

TCEQ Interoffice Memorandum

complaints, writing notices of violations and in some cases notices of enforcement, collecting water use data, and recording their activities.

Watermasters maximize the beneficial use of surface water and minimize potential impairment to senior water rights. With their real-time monitoring of local stream flows, watermasters can respond quickly to identify and stop illegal diversions. Also, because watermasters have information on what water is being diverted under a water right at any given moment, they should be able to better anticipate a shortage before it reaches the crisis point, thus enabling the watermaster and local users to work together to develop a strategy that will best meet everyone's water needs.

In Non-Watermaster Areas

TCEQ regional offices conduct water management to increase agency awareness of potential impacts to surface water and to provide information critical for the agency's evaluation and determination of priority calls. This water management includes: monitoring United States Geological Survey (USGS) gages, using flow data from applicable TCEQ Surface Water Quality Monitoring sites, and coordinating with and reaching out to impacted parties.

The regional offices conduct water rights related initiatives (including flow monitoring, stream assessments, and on-site investigations) when deemed necessary. Other than these initiatives, water rights investigations are complaint driven, unless conducted to ensure compliance with a priority call.

2. **Water rights management during senior or priority calls**

In Watermaster Areas

When stream flows diminish, a watermaster allocates available water among the users according to priority dates. 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.

TCEQ Interoffice Memorandum

In Non-Watermaster Areas

In order to provide the best possible response to drought conditions and facilitate response to water right priority calls, the agency created the Drought Response Task Force. The Task Force, comprised of multi-office staff with water rights expertise, is focused on responding to priority calls. The Task Force developed the Water Right Priority Response Process, which was presented at Commission Agenda on October 31, 2012. See Attachment A for a detailed explanation of this process.

3. Handling illegal diversions

In watermaster areas

In watermaster areas, staff are in the field daily checking on authorized diversions. This consistent presence in the field enables the watermaster office to more readily identify potential illegal diversions. Watermaster offices handle illegal diversions by issuing field citations or notices of violation and/or enforcement based on the nature of the violation(s).

In non-watermaster areas

In most cases, within non-watermaster areas, investigations of these diversions occur as a result of a complaint. Suspected illegal water diversions outside watermaster areas are currently addressed by OCE based on one of the following scenarios: 1) normal conditions, no curtailment in effect in response to a priority call; or 2) priority call conditions, curtailment in effect due to active priority call.

- Normal Conditions – No Curtailment in Effect: Water diversions outside watermaster areas are currently addressed by regional field staff on a complaint response basis. No daily information on diversions are currently received or reviewed by OCE field staff. Investigations of water right holders are currently non-routine and are initiated only in response to reported conditions.

TCEQ Interoffice Memorandum

- **Priority Call Conditions – Curtailment in Effect:** Tools used by OCE during times of curtailment in response to a priority call include: frequent tracking of available flow gages, observations by flyovers and “boots on the ground” to monitor river conditions, and coordination with sister agencies to obtain and track information. OCE tracks flow gages during these priority call conditions using the “follow the water” concept to identify specific segments of a river that should be focused upon for closer observations of potentially illegal diversions and investigations of both water right holders and non-permitted persons.

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).

Evaluation of the Sabine River Basin, Neches River Basin, and Neches-Trinity Coastal Basin

Coordination of Agency Programs

- OW worked with OCE and OLS to create the letters and information that TCEQ provided to stakeholders prior to holding three stakeholder meetings. This information was also included on the watermaster evaluation webpage.
- OW and OCE Region staff involved in water rights 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 16 comments and all other information (costs, complaints, threats, etc.) received during the stakeholder process. Intergovernmental Relations (IGR), Agency Communications, and SBEA provided support and input as needed.

TCEQ Interoffice Memorandum

Action Plan for 2014 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 3 (calendar year 2014):

1. Sabine River Basin
2. Neches River Basin
3. Neches-Trinity 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:

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?*

TCEQ received two priority calls during the previous three years in the basins being considered.

In the Sabine River Basin, a water right holder on Little Sandy Creek made a priority call to the TCEQ on November 30, 2011, which resulted in the suspension of six water right holders. TCEQ mailed suspension letters on January 4, 2012 to affected water right holders. None of the suspended water rights authorized water use for municipal or power generation purposes. The call was rescinded on February 1,

TCEQ Interoffice Memorandum

2012, and TCEQ mailed letters on February 16, 2012 to affected water right holders notifying them that the call had been rescinded and that they could resume diversion and impoundment according to the terms and conditions of their water rights.

In the Neches River Basin, TCEQ received a priority call on September 27, 2011 from the Lower Neches Valley Authority (LNVA). This resulted in TCEQ suspending 51 temporary permits. On November 10, 2011, suspension letters were mailed to 202 owners of water rights (excluding junior municipals and power plants) in the Neches River Basin. On January 12, 2012, LNVA amended its priority call, which allowed over 160 water right holders to resume diversion and impoundment under its water rights. Finally, on April 4, 2012, TCEQ notified all water rights holders that they could resume diversions and impoundment according to the terms of their water rights.

Outside of the above priority calls, TCEQ is not aware of any water shortages or issues; however, certain cities have implemented watering restrictions based on their drought contingency plans.

The following complaints were received and investigations conducted in each basin.

Table 1. Summary of Complaints and Investigations Between FY 2011 and 2013

Basin	FY 2011		FY 2012		FY 2013	
	Complaints	Investigations	Complaints	Investigations	Complaints	Investigations
Sabine	3	38	9	52	5	42
Neches	9	23	7	68	2	36
Neches-Trinity	0	0	0	8	0	6

Investigation types included complaints, temporary permits, and compliance initiatives.

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

TCEQ Interoffice Memorandum

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.

Senior water rights were threatened in the Sabine River Basin and on a larger scale in the Neches River Basin in 2011 based on the presence of priority calls. The occurrence of a priority call has only occurred in each basin once in 2011, and has not occurred since.

Geographic Reach of River Basins

The Sabine River Basin includes all or a portion of 21 counties; the Neches River Basin includes all or a portion of 21 counties; and the Neches-Trinity Coastal Basin includes all or a portion of five counties (Table 2).

The following possible scenarios were considered during this evaluation. While this evaluation does not include a recommendation to establish a watermaster at this time; staff is providing three scenarios to the Commission to aid in its review, two of which would include a watermaster program.

- Scenario 1 would include one watermaster program for all three basins and would include approximately 557 water rights in the combined areas.

TCEQ Interoffice Memorandum

- Scenario 2 would include one watermaster program in only one of the basins being reviewed, either the Sabine River Basin or the Neches River Basin. This would include approximately 202 water rights currently in Sabine River basin, or 246 water rights currently in the Neches River Basin.
- Scenario 3 would be no appointment of a watermaster in any of the basins evaluated.

If a watermaster were appointed, 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 (see Figures 1, 2 and 3).

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

<i>Sabine</i>	<i>Neches</i>	<i>Neches-Trinity</i>
Collin	Anderson	Chambers
Franklin	Angelina	Galveston
Gregg	Cherokee	Jefferson*
Harrison	Hardin	Liberty*
Hopkins	Henderson	Orange*
Hunt	Houston	
Jasper*	Jasper*	
Kaufman	Jefferson	
Newton*	Liberty*	
Orange*	Nacogdoches	
Panola	Newton*	
Rains	Orange*	
Rockwall	Polk	
Rusk*	Rusk*	
Sabine*	Sabine*	
San Augustine*	San Augustine*	
Shelby*	Shelby*	
Smith*	Smith*	
Upshur	Trinity	
Van Zandt*	Tyler	
Wood	Van Zandt*	
21	21	5

* Counties located in more than one basin.

TCEQ Interoffice Memorandum

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

	<i>Sabine River Basin</i>	<i>Neches River Basin</i>	<i>Neches-Trinity Coastal Basin</i>	Total
No. of Water Rights	202	246	109	557

Note: Temporary permits issued by the Central and Regional Offices of the TCEQ were not considered during this evaluation because the number of temporary permits is not significant and may fluctuate during the evaluation period.

Table 4. Scenario 1 (All Three Basins): Number of Permitted Water Rights by County

- Number of permitted water rights in the subject area: 557
- There are a total of 35 counties in the subject area, 30 of which currently have permitted water rights. Counties with an asterisk (*) are located in more than one basin.

<i>County Name</i>	<i>Number of Unique WRs</i>
Anderson	23
Angelina	11
Chambers	35
Cherokee	29
Collin	0
Franklin	0
Galveston	0
Gregg	15
Hardin	3
Harrison	22
Henderson	12
Houston	18
Hopkins	5
Hunt	4
Jasper*	7

TCEQ Interoffice Memorandum

Jefferson	88
Kaufman	0
Liberty*	2
Nacogdoches	31
Newton*	5
Orange*	5
Panola	16
Polk	6
Rains	6
Rockwall	0
Rusk*	27
Sabine*	2
San Augustine*	4
Shelby*	7
Smith*	64
Trinity	2
Tyler	19
Upshur	7
Van Zandt*	36
Wood	46

Table 5. Scenario 2.a. (Sabine River Basin): Number of Permitted Water Rights by County

- Number of permitted water rights in the subject area: 202
- There are a total of 21 counties in the subject area, 15 of which currently have permitted water rights. Counties with an asterisk (*) are located in more than one basin.

<i>County Name</i>	<i>Number of Unique WRs</i>
Collin	0
Franklin	0
Gregg	15
Harrison	22
Hopkins	5
Hunt	4
Jasper*	0
Kaufman	0
Newton*	5
Orange*	2
Panola	16
Rains	6
Rockwall	0

TCEQ Interoffice Memorandum

Rusk*	17
Sabine*	1
San Augustine*	0
Shelby*	4
Smith*	32
Upshur	7
Van Zandt*	20
Wood	46

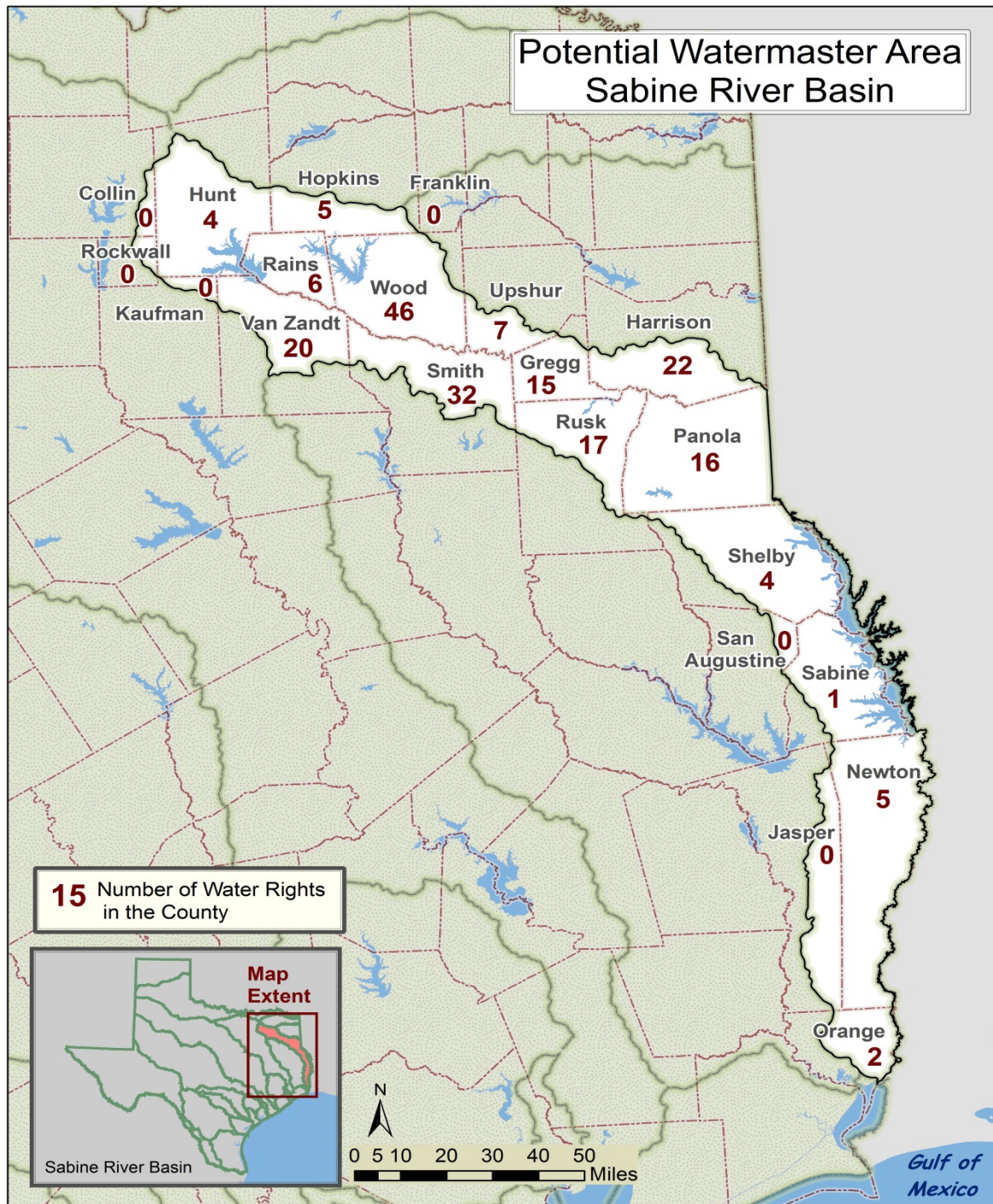
Table 6. Scenario 2.b. (Neches River Basin): Number of Permitted Water Rights by County

- Number of permitted water rights in the subject area: 246
- There are 21 counties in the subject area, 20 of which currently have permitted water rights. Counties with an asterisk (*) are located in more than one basin.

<i>County Name</i>	<i>Unique WRs In County</i>
Anderson	23
Angelina	11
Cherokee	29
Hardin	3
Henderson	12
Houston	18
Jasper*	7
Jefferson	14
Liberty*	2
Nacogdoches	31
Newton*	0
Orange*	3
Polk	6
Rusk*	10
Sabine*	1
San Augustine*	4
Shelby*	3
Smith*	32
Trinity	2
Tyler	19
Van Zandt*	16

TCEQ Interoffice Memorandum

Figure 1. Water Rights in the Sabine River Basin



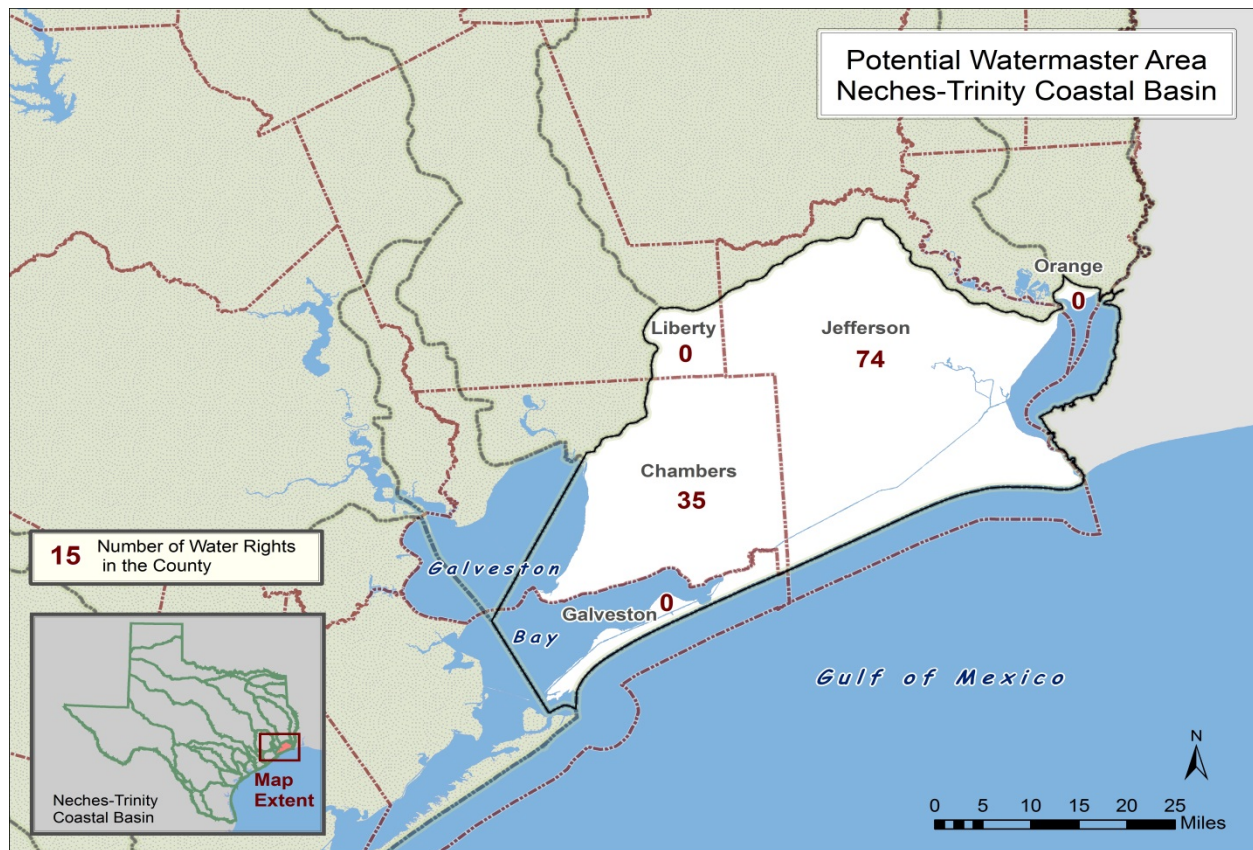
TCEQ Interoffice Memorandum

Figure 2. Water Rights in the Neches River Basin



TCEQ Interoffice Memorandum

Figure 3. Water Rights in the Neches-Trinity Coastal Basin



Location of USGS Stream Flow Gages

Currently, there are 19 USGS stream flow gages in the Sabine River Basin, 13 in the Neches River Basin, and one in the Neches-Trinity Coastal Basin.

Existence of River Compacts

The State of Texas is a member of an interstate river compact in the Sabine River basin. Interstate river compact commissions have been established to administer each of the compacts. The primary function of the compact commissions is to ensure that each member state receives its equitable share of the waters, as allocated by the applicable interstate compact. The TCEQ is responsible for administering water rights to ensure the provisions of the Sabine River Compact are met.

TCEQ Interoffice Memorandum

Environmental Flows

On April 20, 2011, the TCEQ adopted 30 Texas Administrative Code (TAC) Chapter 298, Environmental Flow Standards for Surface Water. Subchapter C of Chapter 298 includes the adopted environmental flow standards for the Sabine and Neches Rivers, and Sabine Lake Bay. The adopted standards apply to new appropriations to store, take, or divert water. Under 30 TAC §298.285, 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.

Stakeholder Involvement

Consistent with Commission direction to involve stakeholders in the evaluation process, WAD 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 5, 2014, and requested initial comments by April 4, 2014. 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. Staff from WAD and OCE facilitated three stakeholder meetings in June 2014. These meetings were held in Tyler, Lufkin, and Beaumont. Final stakeholder comments were due on June 13. A total of 52 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.

TCEQ Interoffice Memorandum

Table 7. Comments Received

	Sabine			Neches			Neches-Trinity			Multiple Basins			Total		
	WRH	¹ Others	Total	WRH	¹ Others	Total	WRH	¹ Others	Total	WRH	¹ Others	Total	WRH	¹ Others	Total
In Favor	-	-	-	-	-	-	-	-	-	-	-	-	0	0	0
Opposed	4	-	4	11	-	11	2	-	2	-	1	1	17	1	18
Neutral	-	-	-	-	-	-	-	-	-	-	-	-	0	0	0
Total	4	-	4	11	-	11	2	-	2	-	1	1	17	1	18

¹Others refers to Interested Parties

Cost for Evaluation Activities

Total Costs for TCEQ Evaluation Activity: \$106,923.00

Office of Water Costs

The estimated cost to conduct the evaluation is approximately \$105,537.22. This includes salary, fringe, postage, and travel, with the following breakdown:

- Staff time: \$80,532.00
 - Eleven staff participated in this evaluation for a portion of their time, equating to 2.0 FTEs for the duration of the project.
 - Calculated salaries and fringe for 2.0 FTEs from December 2013 through August 2014 (9 months).
 - Assumed mid-level B19.
- Fringe (29.74% of base salary): \$23,950.22
- Postage: \$622.00
- Travel: \$433.00
- **Total: \$105,537.22**

TCEQ Interoffice Memorandum

Office of Legal Services Costs

- OLS staff time: \$140.00
 - Calculated staff attorney review time of 3 hours
- **Total: \$140.00**

Office of Compliance and Enforcement Costs

- OCE staff time: \$1,189.78
 - Calculated regular labor plus travel time of 38 hours
- State equipment use (vehicle): \$56.00
- **Total: \$1,245.78**

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

Two example watermaster scenarios were considered in the assessment of costs:

- Scenario 1 would include all three basins, with an estimated cost to implement of \$478,253.16 for Year 1 and \$361,756.14 for consecutive years (Attachment B).
 - Key provisions of Scenario 2 include:
 - One watermaster located in the Beaumont regional office
 - Three watermaster specialists / field deputies (divided between the Beaumont and Tyler regional offices)
 - One administrative assistant in the Beaumont regional office

TCEQ Interoffice Memorandum

- Scenario 2 would include only one basin, either the Sabine River Basin or the Neches River. The estimated cost to implement would be \$295,332.07 for Year 1 and \$233,960.35 for consecutive years (Attachment B).
 - Key provisions of Scenario 2 include:
 - One watermaster in the Beaumont or Tyler regional office
 - One watermaster specialist / field deputy in the Beaumont or Tyler regional office
 - One administrative assistant in the Beaumont or Tyler regional office
- Scenario 3 would be no watermaster program.

Cost Differences Summary

It is difficult to establish the cost benefits of having a watermaster versus 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 for the previous three years to manage water rights in the basins being considered. For the years being considered the costs to TCEQ were below the estimations of the costs associated with having a watermaster.

Tables 8.a. and 8.b. Water Rights Management Cost Outside of Watermaster Areas

8.a. Costs for all water right activities by OCE:

Fiscal Year	Sabine River Basin	Neches River Basin	Neches - Trinity Coastal Basin	Cost (Total)
2011	\$7,183	\$6,312	\$0	\$13,495
2012	\$11,304	\$9,947	\$1,602	\$22,853
2013	\$9,205	\$7,965	\$1,295	\$18,465

TCEQ Interoffice Memorandum

8.b. Costs associated with responding to water rights priority calls, i.e., TCEQ Drought Response costs:

Fiscal Year	Sabine River Basin	Neches River Basin	Neches -Trinity Coastal Basin	Cost (Total)
2011	\$0	\$0	\$0	\$0
2012	\$415	\$9,391	\$0	\$9,806
2013	\$773	\$0	\$0	\$773

Additional Information

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 to TCEQ 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.

TCEQ Interoffice Memorandum

Prior Water Divisions

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 a repeated 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 any of the basins being reviewed: Sabine River, Neches River, nor Neches-Trinity Coastal.**

TCEQ Interoffice Memorandum

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 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.	No more than 2 days
4. OLS will prepare draft order including working with OGC to expedite agenda setting.	
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 and state agencies. OW notifies 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

Scenario 1 Cost Estimate: Combined Area**Includes Entire Sabine River, Neches River, and Neches-Trinity Coastal Basins**

	Year 1	Year 2	Basis
Base Salaries			
<i>Program Supervisor III - Watermaster</i>	\$54,761.00	\$56,622.87	1 Watermaster (Program Supervisor III) – Pay Group B19** (mid-point of range) with 3.4% merit increase in year 2.
<i>Administrative Assistant II</i>	\$26,332.00	\$27,227.29	1 Administrative Assistant II, Pay Group A11** (entry point) with 3.4% increase in year 2.
<i>Watermaster Specialist II</i>	\$110,928.00	\$114,699.55	3 Watermaster Specialists, Pay Group B17** (entry point, \$36,976 each FTE) with 3.4% merit increase in each FTE by year 2.
Total Salaries	\$192,021.00	\$198,549.71	5 FTEs
SORM fee	\$750.00	\$750.00	Estimate \$150 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	\$10,000.00	\$10,000.00	Used table of standard costs for new FTEs* (\$2,000.00 per FTE)
Training	\$960.11	\$992.75	Used table of standard costs for new FTEs* (\$0.5% of base salaries)
Rent – Building	\$16,650.00	\$16,650.00	Assumed 3 FTEs in Beaumont regional office and 2 FTEs in Tyler regional office, using OAS estimates of 1,500 square feet at \$15/square foot (one waiting area, one office, 4 cubicles, one storage area, and one copy/file area).
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 (\$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 (each a 4-wheel drive truck) @ \$28,000 each
Appropriation Total:	\$419,646.11	\$301,207.46	
Fringe	\$57,107.05	\$59,048.68	29.74% of the base salary, based on table of standard costs for new FTEs*
SWCAP fee	\$1,500.00	\$1,500.00	Estimate \$300 per FTE based on existing programs' average
Additional Fund Obligation:	\$58,607.05	\$60,548.68	
TOTAL ASSEMENT:	\$478,253.16	\$361,756.14	

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

**State Auditor's Office FY15 State Salary Schedules:

<http://www.hr.sao.state.tx.us/Compensation/Schedules.html>

Schedule A (FY15): <http://www.hr.sao.state.tx.us/Compensation/schedule.aspx?schedule=2015A>

Schedule B (FY15): <http://www.hr.sao.state.tx.us/Compensation/schedule.aspx?schedule=2015B>

Scenario 2 Cost Estimate: One Basin**Includes Either the Sabine River Basin or the Neches River Basin**

	Year 1	Year 2	Basis
Base Salaries**			
<i>Program Supervisor III - Watermaster</i>	\$54,761.00	\$56,622.87	1 Watermaster (Program Supervisor), Pay Group B19** (mid-point of range) with 3.4% merit increase in year 2.
<i>Administrative Assistant II</i>	\$26,332.00	\$27,227.29	1 Administrative Assistant II, Pay Group A11** (entry point) with 3.4% increase by year 2.
<i>Watermaster Specialist II</i>	\$36,976.00	\$38,233.18	1 Watermaster Specialist, Pay Group B17** (entry point) with 3.4% merit increase for each FTE by year 2.
Total Base Salaries	\$118,069.00	\$122,083.34	3 FTEs
SORM fee	\$450.00	\$450.00	Estimate \$150 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	\$6,000.00	\$6,000.00	Used table of standard costs for new FTEs* (\$2,000.00 per FTE)
Training	\$590.35	\$610.42	Used table of standard costs for new FTEs* (0.5% of base salaries)
Rent – Building	\$13,650.00	\$13,650.00	Assumed 2 FTE in Beaumont regional office and one FTE in Tyler Regional office. Used OAS estimates of 900 square feet at \$15/square foot (one waiting area, one office, 2 cubicles, one storage area, and one copy/file area)
Other Operating Expenses (phone/utilities, supplies – consumables, rent – machine and other, postage)	\$7,959.00	\$7,959.00	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	\$9,000.00	\$9,000.00	Used table of standard costs for new FTEs* (\$3,000.00 per FTE)
LAR - IT	\$3,600.00	\$0.00	Used table of standard costs for new FTEs* (\$1,200.00 per FTE)
LAR - Vehicles	\$56,000.00	\$0.00	2 vehicles (each a 4-wheel drive trucks) @ \$28,000 each
TOTAL:	\$259,318.35	\$196,752.76	
Fringe	\$35,113.72	\$36,307.59	29.74% of the base salary using FY13 table of standard costs for new FTEs*
SWCAP fee	\$900.00	\$900.00	Estimate \$300 per FTE based on existing programs' average
Additional Fund Obligation:	\$36,013.72	\$37,207.59	
TOTAL ASSEMENT:	\$295,332.07	\$233,960.35	

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

**State Auditor's Office FY15 State Salary Schedules:

<http://www.hr.sao.state.tx.us/Compensation/Schedules.html>

Schedule A (FY15): <http://www.hr.sao.state.tx.us/Compensation/schedule.aspx?schedule=2015A>

Schedule B (FY15): <http://www.hr.sao.state.tx.us/Compensation/schedule.aspx?schedule=2015B>